

ALIEN SMUGGLING

HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

JUNE 30, 1993

Serial No. 9

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United States. Congress.
House. Committee on the
Alien smuggling

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ALIEN SMUGGLING

WEDNESDAY, JUNE 30, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:09 a.m., in room 2237, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Romano L. Mazzoli, Charles E. Schumer, George E. Sangmeister, Xavier Becerra, Bill McCollum, Lamar S. Smith, Elton Gallegly, and Charles T. Canady.

Also present: Representative Hamilton Fish, Jr.

Staff present: Eugene Pugliese, counsel; Kevin Anderson, assistant counsel; Judy Knott, clerk; and Carmel Fisk, minority counsel.

OPENING STATEMENT OF CHAIRMAN MAZZOLI

Mr. MAZZOLI. The subcommittee will come to order.

Just a few brief opening statements to set the stage for what we will do today, which is really a further progression on what we began to do earlier this session and what we hope to do later on, if not this week, next week, with respect to a major piece of legislation that my colleague, Mr. Schumer, and my colleague, Mr. McCollum, and I intend to introduce on this whole issue of asylum.

So today's hearing is not one in isolation, but part of a continuum. In the past weeks there have been numerous press articles on the smuggling of aliens from the People's Republic of China into the United States, and while it could appear, because these seem to be a spate of articles, that this is something new, actually this trafficking, this illegal and horrible trafficking, is something very old.

It is not a practice, obviously, just limited to the People's Republic of China. Smuggling enterprises also operate out of Central America and Mexico, the Dominican Republic, and many other countries of the world. Alien smuggling is a part of the larger picture of illegal immigration, which, parenthetically, when the Attorney General met with us on the 16th of this month, she indicated to us that this is one of the biggest problems facing her as our new Attorney General.

The crime of alien smuggling involves both the individual who spirits in a family member as well as the organized syndicate which sells a commodity, the illegal entry into the United States for, we hear, a very, very large sum of money. The recent interdic-

tions of vessels laden with Chinese migrants is disturbing not only in terms of immigration but also because these individuals usually face confinement in deplorable conditions and then maybe years of what amounts to slavery or involuntary servitude if their families cannot scrape together the exorbitant fees required to buy their release.

When we had our meeting with the Attorney General, at that time, that very same week, both U.S. News & World Report and Newsweek magazine had articles—in one case it was a cover story—and both of them carried the identical headlines, “The New Slave Trade,” to designate what was going on with regard to the Chinese.

Commercial smuggling enterprises are often intricately interrelated with other criminal and civil offenses, including employment and workplace violations, prostitution, extortion, and drugs. Many of these related criminal issues fall under the jurisdiction of my friend and ranking member, the gentleman from New York, Mr. Schumer, and of course his subcommittee will be looking into those. It is a happy coincidence that I serve on the gentleman's subcommittee and he serves on mine, so there will be a good cross-pollination of ideas as we look into this activity.

The President has recently announced an intent to develop a new plan, a comprehensive plan. He announced it to those of us who joined him on the south lawn when he introduced his nominee, Doris Meissner, for the position of Commissioner of INS. This administration plan will include both administrative and legislative reforms. If my recollection is correct, there were 12 separate agencies of government that would be working together under the codirectorship of the National Security Council and the Domestic Policy Council. I think, however, that Ms. Reno herself is the leader of that effort.

So we are here today to talk about what has been done by the administration and what will be done in the future. The subcommittee is very interested in working with the administration to develop a comprehensive and effective response to a very deeply troubling problem. It is a real problem.

My friends on the subcommittee and I have faced witnesses and heard the testimony about the 300,000 pending asylum cases, about the 100,000 people who apply annually for asylum, when the system was built to accommodate perhaps 5,000 or 10,000. We have heard from Ms. Ogata, the U.N. Commissioner for Refugees, that there are something like 19 million refugees in the world, dislocated people, people who are looking for some place to alight, and, recognizing that we cannot accommodate every person, our then task is to decide how do we accommodate people, what protection and treatments do we give them, what due process are they entitled to, what can we afford to give them beyond due process. Is there such a thing as excessive due process, as one of our earlier witnesses said? So we are faced with these situations.

I did want to tell my colleagues that one of our early hearings was about the question of employer sanctions and whether or not that phase of the 1986 Immigration Reform and Control Act is working. The testimony was that there are something like 46 documents that can be proffered to prove either a person's identity or

a person's right to work. I think it is fair to say that there are 17 versions of the green card. So you add that to the 29 and you get the 46.

In any event, it is far too many. So while we have been debating the issue of a single identifier, as advocated very effectively by Tony Beilenson, our colleague from California, and objected to with equal vigor and eloquence by the gentleman from New York, Mr. Serrano, I have asked the Attorney General in a letter yesterday to see if she could not administratively collapse this number of documents down to something that is workable on the part of the employers of America who want to do the right thing, so that we can not have to get immediately to the argument of should or should there not be a single card, though that is coming up in the context of the national health care program. So, one way or the other, we are going to have to face that issue.

Anyway, having said that, I think there are a lot of things we will ask our witnesses. I want to yield to my friends for their statements, but I think that clearly we have to do something and the bill that will eventually be filed by the gentleman from New York and the gentleman from Florida and me may take a step in the direction of trying to help solve the problem.

With that, I yield to my friend from Florida, the ranking member of the subcommittee.

Mr. MCCOLLUM. I thank the chairman for yielding, and I want to join him in this important hearing today in welcoming all of the witnesses who will be before us.

I agree that there have been historical patterns in alien smuggling that go beyond the *Golden Venture* issue that is so much in the forefront right now, but this issue, of course, has crystallized some unique problems that exist today. Long before now, we have had smuggling issues involving Mexicans who have been hidden in the bottoms of vehicles and oftentimes suffocating or dying. Problems of that nature have existed across our southern border for years.

We have had the smuggling aboard ships and vessels as well as airplanes and strange instances where people either survived or didn't when they were in various unique compartments and so forth, and, of course, the abuses that occur, as has been discussed by you a few minutes ago, Ron, with regard to the slave trade part of this.

That is not unique, but it is currently a critical question, because the Chinese issue is before us and because today we are getting all these asylum claims, for whatever reason, from various parts of the world. The abuse of the asylum system is apparent not just in the Chinese smuggling case, but in cases of persons who have come into our various ports of entry from various other countries around the world, whether they are from Pakistan or China or wherever. That is why I think the legislation that you and I and Congressman Schumer have crafted that will be introduced here shortly is a very critical at least first step toward remedying the kind of procedural problems that have led to making this a greater burden on the American public and on our law enforcement folks than it has been in the past.

We need very badly to address this and to do what we can to eliminate or, if we can't eliminate, mitigate the problems that are caused by this in all sorts of ways. The problems in our entire immigration situation, not just smuggling and asylum claims, I think have become much heightened in the last few years. This is one step in the direction of addressing them.

So I am really interested today in hearing about the smuggling part of it from all the witnesses who will be here to see if what we are doing is really on the right track.

Thank you.

Mr. MAZZOLI. Thank you very much, Bill.

It is important what the gentleman just said, and that is that what we would offer is a first step, and there are many, many steps, and the administration has its bills or series of bills. So there will be a lot to put on the table when we come to pulling it together.

At this point I would like to yield to my friend from New York, the gentleman, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

First, let me thank you for holding not only this hearing but you have been working long and hard on this issue for many, many years, and I think all of us in the Congress appreciate the diligence and fairness with which you embrace the issue and the search for solutions to the problems that we face.

Mr. Chairman, when the *Golden Venture* washed up on the shores of Rockaway Beach, which is in my district, it brought the country face to face with a problem that New York has been coping with for several years. It is a modern day slave trade, actual trafficking in human beings, that has grown up right under our nose.

It started in the late 1980's when smugglers began to use commercial airline flights to bring in illegal aliens by the thousands. The latest development is the use of freight ships, like the *Golden Venture*, which are even cheaper for the smugglers.

In the first place, this is an immigration problem. The smuggling rings pave the way for those who would ignore our immigration laws and simply jump to the head of the line, ahead of those who have patiently waited for years and years and years to come into this country. But even more insidiously, it is a crime problem.

In many cases, the people being smuggled in are themselves victims. They will be held in thrall to sweatshops or, worse, to drug cartels. They are often sold. These smugglers—the people land, and then they sell them to a sweatshop or sell them to somebody to be their worker for years and years and years until the debt that they have acquired for passage and for the know-how of how to get into this country, albeit illegally, is paid off.

These terrified newcomers are highly valued by the organized crime networks that now control a good deal of the drug trade. So what happened on the *Golden Venture* has ramifications not only in terms of the human misery but in terms of drugs and other things that are part of the country.

The most distressing part of this is, we continue to invite the smugglers to ply their trade. The whole industry grew up by taking advantage of loopholes in the immigration law, specifically an asylum system that has become such a mess that all an illegal alien

has to do is utter the word "asylum" when he or she gets here, and they are home free.

The Clinton administration has made it clear it is strongly committed to addressing the problem and has already taken steps to toughen enforcement against the smugglers. I applaud this initiative, but, frankly, we are going to have to do much more, and the Congress is going to have to do its part.

We are going to have to streamline the asylum process so that people with frivolous claims can be moved out quickly, and I say to my colleagues on the left that if we keep the system the way it is, we will end up with no asylum system because the amount of abuse that exists in the system is so large that, unless we correct it, it is going to overwhelm the legitimate parts of the system.

But we should keep asylum and keep the legitimate parts of the system, and I say to my colleagues on the right that I doubt very many Americans, when actually confronted with the problem, want to turn the Statue of Liberty around, want to say nobody should be allowed to come here at all, whether they be asylees or people seeking a better life.

This, in my opinion, Mr. Chairman, is not an intractable solution. We have lots of intractable solutions—you know, the cure for AIDS, even finding money for housing in the cities we don't seem to get there—but this one, with a little focus and a little diligence and a little give by just about everyone concerned, we can come up with a solution that makes everyone better off—the American citizen, the immigrant who seeks to come here legally, who is now sort of ignored and pushed to the back, and even those who come here illegally who are part of this wretched trade in human flesh.

So we are going to have to stiffen the penalties so that the law works well, we are going to have to have the penalties tougher on the smugglers, but we are also going to have to deal with the fundamental root cause of the problem, which is that the asylum laws aren't working as they were envisioned to work.

Mr. Chairman, again, you have been a leader on this issue, and I look forward to continue to working with you on it.

Mr. MAZZOLI. I thank the gentleman.

The gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman, and I join my colleagues in thanking you for calling this meeting this morning, and I would certainly like to commend Mr. Schumer. I think he really hit the nail on the head with this issue.

I think it is also important to note that on the issue of asylum we have approximately 280,000 people right now awaiting processing, if that number is fairly close to correct, plus or minus a couple of thousand; we have currently 120,000 new applicants applying for asylum each year; and in the past 2 years it is my understanding that we have only been able to process approximately 22,000, total, with 120,000 coming in. So obviously the system is broken and this issue needs to be addressed very aggressively, as it appears this committee is focusing on doing.

We have certainly seen the issue of those that have been coming in aboard ship as a very high profile news item in the past weeks and months, but I would like to remind my colleagues that, in addition to the 2,200 or 2,300 that have entered this country illegally

aboard ships that we see on the nighttime news as kind of the main news item in recent weeks and months over the last, I believe, 10 or 11 months, during that same period of time in the 10 miles of international border at San Diego, CA, we have had a few more than 2,300 enter the United States; the number is closer to 1 million. So I think that, in and of itself, tells you the magnitude of the problem, and I hope that we don't forget that issue as well.

Thank you, Mr. Chairman.

Mr. MAZZOLI. I can assure the gentleman we are not. In fact, part of our effort is to make sure, and we will hear later this morning from Ms. Sale and eventually, I hope, from Ms. Meisner, on just exactly what does the Immigration Service really need.

For so many years I have sat here as chairman of the committee hearing delegates from the Department ask for what they were told to ask for basically, not what they really needed, and now I would like to hear from people who tell us what they truly need as far as people and dollars and resources, and I think they will find, just like the gentleman from New York said, I think that Congress wants to cooperate; we want to do the right thing. We want to be sympathetic and sensitive and at the same time invoke the sanctity of our borders any way we realistically can. So I assure the gentleman, we will get into that.

The gentleman from Illinois.

Mr. SANGMEISTER. I have nothing at this point, Mr. Chairman. I am sorry that I am late. There are four subcommittees going on right now. But I do have an opening statement I would like to put in the record.

Mr. MAZZOLI. Without objection, it will be so ordered.

Thank you.

[The prepared statement of Mr. Sangmeister follows:]

Opening Statement
Congressman George Sangmeister

Subcommittee on International Law, Immigration and Refugees
Oversight Hearing on Alien Smuggling

Thank you Mr. Chairman, and thank you for holding this hearing. I also want to thank the many representatives from the Administration who are here to testify. I am new to this subcommittee, and I am not from a border state where the immigration problems have been much more acute. However, I have rapidly become aware that fixing our many immigration problems must be one of our highest priorities. I am very pleased that President Clinton and Attorney General Reno have decided to take the lead on this issue.

There is a bit of irony in our holding this hearing during what we could call "appropriations week." This is for two reasons. We are massively in debt and the cost of illegal and legal immigration continues to run incredibly high. From \$400 million in Medicaid costs for illegal aliens in Southern California to the increased funding I think most of us agree is needed for the Immigration and Natural Service, Customs Service and Border Patrol it is clear we simply cannot afford inaction.

On perhaps the brighter side, we are all listening to dire predictions about the astronomical growth of the Federal deficit and how it will destroy the American economy. Perhaps we can find some solace, though with a four trillion dollar deficit it may be very little, in knowing the outside world does not believe us. From the Near East to the Far East and the Mid East to the Former eastern block, it seems everyone wants to come to America because this is where they believe they will find unlimited economic opportunity.

Today we will discuss the most disturbing example of this. Aliens from the People's Republic of China are selling themselves into virtual slavery for a boat ride to the United States. Worse, organized crime rings are making tremendous profits from this traffic in human misery. I am pleased the Clinton Administration has already taken steps to address this. I am especially interested in hearing the Administration's suggestions for legislative reform and, as I have been saying for months, this Member of Congress is ready to move legislation right now.

Thank you Mr. Chairman.

Mr. MAZZOLI. The gentleman from Texas.

Mr. SMITH. Mr. Chairman, thank you very much.

I just want to thank you for having this hearing on such an important subject, that being alien smuggling. I don't think there is any more important subject or any subject that the American people are more concerned about today than that. Witness, for instance, as you pointed out, several weeks ago, two of the three news weekly magazines had that subject on their covers.

I would say that I think the problem goes beyond just the alien smuggling. We have talked about that before, and we need to get into the subject of illegal immigration as a whole, because alien smuggling itself is probably just a sliver.

However, the subject of alien smuggling is particularly egregious simply because you have individuals who are taking advantage of other individuals who oftentimes lose their life as a result of this smuggling.

So I thank you for these hearings and look forward to being a part of them.

Mr. MAZZOLI. I thank the gentleman from Texas.

The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

I, too, would like to commend the chairman for the work that he has done in trying to ferret out some of these issues and make it clear that we do need some rational immigration policies. So I do thank the chairman for that.

I also want to commend our two colleagues that we have before us today who will be testifying, I am very interested to hear what they have to say, and, of course, the various witnesses that we also will hear from soon.

I am one who believes—and I have said this before—that we have to make sure we place the whole issue of immigration and illegal immigration into context. The perspective I believe we should have is one that we should not let anti-immigrant sentiment overcome our desires to have rational immigration policy. And at the same time, I believe we have a system which clearly is porous on entry and very clogged when it comes to exit of immigrants who should not be in this country, and that has to change.

With regard to asylum-seekers, I hope that we do a better job of making sure that those who have a valid claim for asylum have a chance to stay here. We should not try to paint every individual who comes into this country and seeks asylum with the broad brush of someone who is seeking asylum without cause and has no grounds to be here in this country. We should do everything we can to make sure that those individuals who come to this country and have a chance to make a valid claim, we give them every chance to do so.

I am very afraid that one thing we may end up with is a system where, within a matter of moments, we make a decision on someone's life and send someone back very quickly to perhaps death. It is time, I believe, that we take a close look at the way we deal with our particular asylum-seekers. There is some problem, it is clear, in New York City. We have seen the reports on CBS and other programs where people have taken advantage of the system, and those people must be dealt with harshly.

But I would hope that at this stage this committee would take a close look at proper ways to deal with people who have valid claims who for years we have treated with generosity when it comes to trying to make out their claims for asylum. At that point I hope we are able to come to a decision that will fairly and judiciously take action on these individuals.

So I again thank and commend the chairman for the opportunity to hear the particular concerns of both the witnesses that are here, Members of Congress, and also the individuals who have dealt with this issue both on the Government level and as advocates. I hope after all is said and done that we will find that we will have a better immigration policy that will deal with not only asylum-seekers but immigrants, whether lawful or without documentation.

Thank you.

Mr. MAZZOLI. I thank the gentleman from California who, on his short time on the committee, has made many contributions to it, and I think the very first statement the gentleman made in our very first hearing was a statement that I found very eloquent, because it does point out that what this committee's task is, is to do the right thing, and to be careful, and balanced, and sensitive to the human aspects that are involved on both sides of this issue.

The gentleman from Florida.

Mr. CANADY. Thank you, Mr. Chairman.

I would like to join in commending you for calling this hearing. I think this is an issue which we must proceed to address in an expeditious manner. It is critical that we address it so that the problems that we have seen are corrected.

I would like to echo what Mr. Schumer said. I believe that we should have provision for asylum under our law. It is important that we in America provide asylum to individuals around the world who are persecuted. But I believe that the system we have now is obviously not working and, if we do not reform it in a major way, we are going to see the end of asylum.

So I think that it is important that we go about this task understanding that and that the reforms we undertake are significant reforms that will really make a difference.

I don't think that tinkering with the asylum system is going to solve the problem or address the public concerns that exist. So I think that we also have to bear that in mind, and I believe that as we consider the issues today this should serve as the backdrop for a broader consideration of the issue of immigration, illegal immigration in particular, and the impact that it is having on America. I think we are going to have to address that broader issue also.

Thank you, Mr. Chairman.

Mr. MAZZOLI. I thank the gentleman from Florida.

We are honored today to have with us the ranking Republican on the full committee, a gentleman with whom I served for many years on this subcommittee and who I think is as much an institutional repository of knowledge on the subject of immigration as anyone in this Congress. So for any opening statements he would have I yield to the gentleman from New York, Mr. Fish.

Mr. FISH. Well, thank you, Mr. Chairman. I certainly like your opening—

Mr. MAZZOLI. I knew you would. It's what you told me to say. I mean you told me to say it.

Mr. FISH. Let me return it by complimenting you for today's hearing on alien smuggling, and I particularly appreciated your stated goal of a comprehensive response to Chinese alien smuggling.

I would just like to mention a few areas of inquiry that interest me. One is the need for additional criminal penalties and asset forfeiture. I would like to know from the administration: What are you doing with the respect to issue of registry of the vessels, which I understand are mostly Central American countries, and also question the concept that alien smuggling is a victimless crime, which I gather is felt by some in the executive branch.

I would also like to know what efforts are being made to involve the Chinese Government in the departure of so many vessels from a few of their ports, and, as has been indicated by my colleagues, of course, this is part of a larger problem of undocumented aliens. I hope we will revisit the common identifier issue and the question of immigration officials stationed at departure points abroad as well as expedited asylum procedures, all of which should help to constitute a comprehensive approach to this problem.

Mr. MAZZOLI. I thank the gentleman.

I might say that the General Accounting Office later this morning will make some very important comments concerning Mr. Schumer's approach on preclearance, which will be very helpful to us.

Well, we now reach the important part of our day, which is to hear from our witnesses. Two preeminent Members of Congress are with us today, both of whom have very important perspectives on this issue that we face, the gentlewoman from California, Ms. Pelosi, and the gentlewoman from New York, Ms. Velázquez.

We will recognize you, if it is OK, Nydia, in order in seniority, if not priority.

Anyway, Nancy, we welcome you, and we will accept the statements from both of you to be put in the record. You are free to address this in any way you wish. We thank you for coming.

STATEMENT OF HON. NANCY PELOSI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. PELOSI. Thank you very much, Mr. Chairman, for calling this important hearing and for your leadership on immigration issues which are important to our country.

It was very interesting to hear the comments of the other members of the committee. I also thank Mr. McCollum for the opportunity to testify before the committee, and of course it is always an honor when Mr. Fish is on the panel for us to have the benefit of his thinking and observations about the problem at hand.

From the sounds of the opening statements, it appears that we have a good representation of a number of perspectives on the issue, and hopefully that will lead to the most wholesome and best solution for this problem.

Mr. Chairman, my congressional district has a deep interest in the subject at hand today. San Francisco has seen two vessels that have been intercepted smuggling individuals from Mainland China. But my district has a deeper interest in this issue because San

Francisco has one of the largest Chinese-American communities of any American city and, indeed, one of the largest Chinatowns in the entire country. San Francisco has been built by and enriched by immigration from China. The Chinese-American community has been a source of great strength, innovation, community, and civil pride.

I am very pleased today that later on the agenda you will be hearing from Yvonne Lee from the Chinese American Citizens Alliance in San Francisco and Henry Der for Chinese Americans for Affirmative Action who will present their perspectives on this issue.

I want to begin my testimony, Mr. Chairman, with a simple principle. Legal immigration which is allowed under our current laws is a positive benefit to our country. Legal immigration can be and historically has been absorbed by this country with great positive results. It reinvigorates our Nation's culture and character. We see immigration from Latin America which recommits us to strong traditions of family values and faith, et cetera, and the work ethic and academic achievement; similarly from Asia our country is once again enriched by these traditions and commitments to values which are truly American.

The second principle is that our country, the greatest democracy in the world, must maintain its historic tradition of being a haven for those fleeing State-sponsored persecution. Indeed, asylum is a necessary component of American foreign policy as well as an important international principle of justice.

Having said that, Mr. Chairman, I want the message to be clear that while we will offer asylum to those who have a well-founded fear of persecution, political persecution, in their country, Uncle Sam is not Uncle Sap.

A final principle is that any reform measures must be comprehensive and consistent. Therefore, any remedy must be done deliberately and with great care and sensitivity to ensure that we remain true to our long held principles governing immigration policy. With these principles in mind, let me address the proposals dealing with illegal smuggling as they have been advanced by the President and Members of Congress.

Mr. Chairman, in your opening remarks you clearly address the issue that many of the people in this smuggling operation, the people who are being smuggled over, are victims, that they have been sold a bill of goods or been sold, period, and I won't go into detail about the conditions under which they have come here and the conditions in which they are here because you very eloquently addressed that, but I agree that that is the case.

I would like to commend the President and Attorney General Reno for their recent policy directives aimed at stopping the smuggling operation at the source on international waters and in the United States.

Mr. Fish mentioned, what is the administration doing about the Chinese Government. I certainly do not speak for the administration, but I will say as one who follows the China issue closely that it is hard to believe that these ships are leaving without any knowledge of the Chinese Government under the system that they have in China.

On the question of asylum, I support the administration's proposal to reduce the wait time for an asylum hearing. Expedited hearings are in the best interests of the applicant and the United States. I am concerned about proposals that would change the standard of proof for claiming asylum.

Mr. McCollum mentioned the number of people who are claiming asylum, and I think that is a reflection not of an easy system but more a reflection of the continued presence of repressive and tyrannical governments in the world. Again, we have to be true to our tradition, but we don't want people taking advantage of our good nature and our tradition to political asylum.

I am not supportive of requirements that would impose an unreasonable statute of limitations for filing an asylum claim without a right to counsel, without adequate notice, and without an adequate system. A time bar to making a claim is unreasonable to ask of someone unfamiliar with our language and our laws, I believe.

I would also urge the committee to reject legislation which would allow a single INS official to render summary exclusion of asylum claim without a right to review or appeal. It is well known that a person fleeing State-sponsored repression learns not to confide in people wearing the official uniforms of government. To expect that within 5 minutes or even 5 hours they will place enough trust in a stranger in uniform, to tell them of extremely personal, very traumatic events, I believe is an unreasonable request.

One INS official, however excellent, who may be unfamiliar with the language and the culture and the country conditions of the potential asylee would run an unacceptable risk of sending back to certain persecution a legitimate candidate for asylum.

Mr. Chairman, let me conclude by thanking you again for your leadership on addressing the grave issue of smuggling of illegal aliens into this country. I cannot stress enough the genuine legitimate fear that solely addressing this issue in the context of recent smuggling incidents can and may lead to fear and suspicion, even xenophobia, of decent hard-working Americans who may be of the same race and ethnic background as those who have sought to come here illegally.

There are those who want to utilize the tactics of fear to stop all immigration to this country. They want to hijack the legitimate concerns over security of our borders into an anti-immigrant movement that would close our borders to everyone. This we, the United States of America, cannot do. We cannot do this as a matter of fairness to families who have played by the rules and waited patiently for their loved ones to arrive. We cannot do it as a matter of principle if we are to be true to our heritage as a haven to the truly oppressed, and we cannot do it as a matter of our national enrichment, to exclude these courageous and industrious newcomers to America.

Once again, Mr. Chairman, I want to thank you for the opportunity to be here and to thank you for the work that you have done to address legal immigration to the United States and illegal immigration to the United States as well. Thank you, Mr. Chairman and members of the committee.

Mr. MAZZOLI. The Chair certainly thanks the gentlewoman from California for the excellent statement, and the Chair is happy to

welcome, on behalf of the subcommittee, the gentlewoman from New York.

**STATEMENT OF HON. NYDIA M. VELÁZQUEZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK**

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Good morning, Mr. Chairman and members of the Subcommittee on International Law, Immigration, and Refugees. I appreciate the opportunity to testify before you today on a matter of critical importance to this Nation and to the 12th Congressional District of New York which I represent. I am talking about the issue of immigration and, more specifically, about asylum reform.

Earlier this month, a vessel by the name of the *Golden Venture* ended its ill-fated journey off the coast of Queens. Given the large media exposure that has been given to this incident, I will not go into detail. What I do wish to point out, however, is how the plight of these individuals has brought some major problems in our immigration system to the attention of the American people. It has exposed the burgeoning business of human smuggling in this country and the slave-like conditions of those immigrants who must repay the exorbitant cost of their passage to the gangs that bring them to the United States in what can only be referred to as subhuman conditions.

At the policy level, the incident has launched an important dialog on immigration matters which includes the need to pursue and punish those gangs organizing and running operations that feed on innocent victims. Furthermore, it renews the call for national legislation that mandates stiffer penalties and higher fines for those found guilty of the horrendous practice of human smuggling.

But there is one other major issue of concern, and it is for this reason that I direct my words to you today. I am talking about the protection of the rights of refugees such as those of the *Golden Venture*. On Monday of last week, I met with Mr. William Slattery, New York regional director for the Immigration and Naturalization Service. This meeting was also attended by several leaders of the Chinese-American community in my district. Together, we voiced our deep concern about the frightening prospect of a double victimization of the *Golden Venture's* occupants. These are individuals who have already suffered at the hands of smugglers and who are now in danger of suffering at the hands of our own immigration system, one which failed to provide them with prompt access to legal representation and which has chosen to make an example of the case of these individuals.

It is of utmost importance that the inadequacies of our immigration laws be corrected so that genuine asylum-seekers will readily receive competent legal representation; I cannot stress this enough. This would both minimize the time of detention and facilitate reunion with family members.

Yet another concern, brought to my attention by the Chinese-American community leaders in my district, is the lack of translators that is being faced by the *Golden Venture* immigrants. Upon their arrival in New York, they were placed in the Varick Street Detention Center in New York City. The lack of available room forced INS officials to relocate them to detention centers in places

like Pennsylvania and Maryland, where the availability of Chinese language interpreters is minimal.

In the past I have stated that we must make sure that we learn the correct lessons from the case of the *Golden Venture*. The pitfall of euphoria-driven reform is all too easily stumbled into. Not long ago, Mr. Arthur Helton, director of the refugee project of the Lawyers' Committee for Human Rights, testified before this very subcommittee. In his statement, Mr. Helton pointed out the need to avoid—and I quote—"the violation of human rights of genuine refugees in the name of 'reform'." These words must be heeded as we venture forth into what will be a reshaping of our immigration system.

Mr. Chairman, I look forward to working with you and other members of the subcommittee on this issue. I do not wish to take up any more time, so you may hear from the distinguished members of this panel, especially from the members of the Chinese-American community who will expand upon the information presented here. I am sure their testimony will be of immeasurable value in the understanding of this delicate issue and in helping us navigate the dangerous waters of asylum reform.

Thank you.

Mr. MAZZOLI. Thank you very much for an excellent statement. It does again call our attention to how this question has to be addressed from the human standpoint.

Let me yield myself 5 minutes to get started on just a very few questions. If I might, Ms. Pelosi, I thought your three principles that framed your statement that legal immigration has positive benefits to the Nation—I could not agree with you more, and I think every commentator worth his or her salt has concluded the same thing and that the Nation must maintain a tradition of being a haven for people who have legitimate fears of persecution back home, and the reforms must be consistent and comprehensive.

I think that our subcommittee, which has labored mightily since the early 1980's on this whole subject, will keep those hallmarks in mind. I certainly shall myself.

The administration's policy directives are wonderful. We heard them when the President spoke to us on the South Lawn. I have read the press conference reports and everything else. But I am not sure that much has been done. I have to ask the question of the people here because time is wasting, it seems to me, and we really need to get on with it.

One thing I would want to mention, Nancy, is, all of the bills I have seen retain a kind of appeal, whether an administrative appeal or, in every case, an appeal to the Federal courts, so that you always have that guarantee in any bill we have, that an applicant will be able to get into the Federal courts if need be.

One of the things I would like to ask you, if I could, is about most favored nation status because, of course, you are perhaps our leader in this whole effort of what to do with China, and, of course, you said in your statement that you have a hard time believing that the Government doesn't have knowledge or maybe the Government is complicit in all of this.

Do you see MFN as a vehicle for our doing something to stop the trade at the source?

Ms. PELOSI. I believe that we do on most favored nation status should be reasonable and achievable so that we can use our leverage to make a real difference in human rights in China and trade practices and proliferation.

Where they do come together is that there are a number of Members of Congress who would like to add to MFN the condition that relates to the one family/one child policy in China and say that until China stops its practices of forced abortions, et cetera, that they should not have most favored nation status.

We don't have it in the bill because it is not a condition that could be achievable in the 12-months period that we could document that it is being complied with, et cetera. But I bring it up because this same policy is one where President Bush, while he, in my view, catered to China in every way as far as the issue of abortion, et cetera, he was tough on China, and he gave political asylum to those fleeing the one family/one child policy.

I don't think an 18-year-old man coming to the United States can claim political asylum on that basis. I think that is an unreasonable request of the United States of America to receive.

Now, this may sound sexist to you. If it were a young woman having an abortion forced upon her because she were having a second child, I think her claim would be different. But the fact is, most of these people on these ships and most of the people who are being smuggled into the United States and then who would claim the family planning policies of China as their asylum, as President Bush had granted them that opportunity, I just don't think that that is in keeping with our asylum law.

Mr. MAZZOLI. Later I am going to ask the representatives of the Justice Department—when we had our meeting on June 16 I asked some questions, and I am not sure, but I hope that they have some answers to them, as to what they are doing with this policy, this sort of special treatment given to these asylum claims based on the "one child" policy and to what extent is that policy being applied even to young single men who have no evidence of any kind of coercion of that nature.

I was really thinking more in my questioning of whether or not we could condition most favored nation to China on the basis of their showing us that they are attentive to this issue of what could be official sanction of boat people leaving.

Ms. PELOSI. I think there is a basis in law, because in the trade law one provision on conditionality that exists in the law, in addition to whatever else we put on it, is the Jackson-Vanik law which addresses immigration. So your concern would be germane in that respect. But we are talking there about their allowing people to leave who are not under sentence or in jail for criminal offenses.

I think it is a legitimate condition. It is something that the Government certainly could help us with, and I think certainly, whether it is part of MFN or part of our dialog with the Chinese independent of MFN, we in the United States should have some answers from China about how this wholesale smuggling is starting in China. I may have some information for the committee that I am not prepared to give today, Mr. Chairman, but I would, if you are interested in this, be pleased to pursue this matter with you with further documentation.

Mr. MAZZOLI. I would like to. We had a conversation on the Capitol steps here a week or so ago, and I would like to follow up.

My last question would be to Ms. Velázquez.

The issues that you have raised about translators and the need to have counsel and so on we certainly will raise with the Immigration Service. One thing I was wondering: Do you feel that the labor laws of the Nation are being enforced correctly in New York City where most of the Chinese and Chinese-Americans seem to be living and working? We hear the tales of the sweatshops and things of that nature. I wonder, do you think that exists, that the sweatshops are a reality, and do you think they can be controlled better than they are now?

Ms. VELÁZQUEZ. Pardon? That they are being controlled?

Mr. MAZZOLI. Do you think they could be controlled better than they are being controlled now by Labor Department investigators or criminal investigators, or is that a myth? Are these people actually working in conditions that U.S. citizens work in?

Ms. VELÁZQUEZ. I think, yes, that this issue should be controlled better by the Department of Labor, and also I think that the immigration system, the INS, need to be provided the resources to be doing an effective job. You want to control the border, but you don't provide enough resources.

One example that I could bring to this committee is Puerto Rico. Puerto Rico is a territory of the United States, and there we don't have enough personnel to control the entering of illegal aliens. They are coming into Puerto Rico competing with the lack of jobs that are there. The same is happening in Chinatown, and not only in Chinatown but in many other communities within my district where we have immigrants from Central America and South America, but it has to be not only the INS, but working together in a coordinated effort, a joint effort, with the Department of Labor.

Mr. MAZZOLI. Good. Thank you very much.

The gentleman from Texas.

Mr. SMITH. Mr. Chairman, thank you.

I would like to pursue some of the questioning that you started in regard to asylum, and also let me point out that I have read recently in a newspaper article that when the original asylum laws were passed in 1980 the projection was that we would be admitting 5,000 to the United States each year. In 1992, last year, the figure was 103,000, or over 100,000. So clearly the numbers exceed what the law was designed to try to accommodate.

It seems to me, if I can mention to my colleagues, that part of the problem we face is that the United States serves as this huge magnet to attract people of all kinds, whether it be legal immigrants, illegal immigrants, refugees, or the asylum applicants that we are talking about right now. It seems to me that unless we reduce the power of that magnet we are never really going to really solve the problem. Right now, that magnet consists of ease of entry, and we don't have enough law enforcement officials at our ports of entry or in between. Part of that magnet consists of benefits that can be obtained by these individuals seeking asylum. Part of it is the ease with which they can be sort of absorbed into our society.

When you look at asylum applicants, for example, those who are processed, 90 percent are at that point released on their own recog-

nizance and expected to return back for hearings; 60 percent never show up at those hearings and obviously are absorbed into our society. There is not an adequate tracking system. We don't have the personnel at any level to keep track of these individuals. We don't have the personnel to apprehend them when they are coming across the border.

So I guess my question to you all is: You both talk in terms of having additional legal counsel, having additional appeals and so forth. Isn't that going to serve as an additional magnet to attract these individuals to the United States?

Let me ask that question, and then I will follow up on that.

Ms. PELOSI. First of all, let me say that I think the most important thing we can do is have as a strong part of our foreign policy the spread of democratic principles and promotion of human rights throughout the world, respect for ethnic minorities in countries, especially in the newly emerging countries in the world from behind the Iron Curtain. In that way, then people would not have a legitimate fear, a well-founded fear, of persecution in their home country.

So when we talk about human rights, it is not some idealistic idea that some people have, it is a very practical, good idea. First of all, I believe it is the right path, but in addition to that, it does then say to an asylee, "You are coming here from a country that is not engaged in repression, so how can you have a well-founded fear of persecution?" Many countries are very repressive these days.

I think that we are not the only country in the world that grants asylum, as you know. This is an international practice, and I have myself been very critical of the British Government for the way they treated Vietnamese refugees in Hong Kong, in some cases attempting summary judgment, et cetera.

But one of the other reasons that people come here—and you mentioned some of them—is that we are the freest country in the world with the strongest Constitution, and we are great, and we have a leadership on this, we started it all, and people are drawn to us, but what we have to do is export that and value it in our relationships with people, other countries, so that they know that to have international relations with us we expect them to respect their people and therefore we won't find them all on our shores. But I think the numbers should not diminish protecting the rights of the people who do come here.

Mr. SMITH. Would you favor, Nancy, additional funding for personnel to make sure that we have better screening of individuals who are seeking asylum? Would you favor additional funding for individuals who would enforce the law and protect our borders? Would you favor additional funding for personnel to track and deport individuals who are not in this country legally?

Ms. PELOSI. As you know, I served—

Mr. SMITH. I'm getting a nod from our colleagues.

Ms. PELOSI. What I am saying is, yes, we should, but let me say this, and Mr. Schumer, as you know, has legislation which would put some of this screening outside the country, in the country of origin, or a country that some of these asylum-seekers would come through.

In my last term, I served on the Treasury/Postal Subcommittee and on Commerce/Justice of the Appropriations Committee, both of those committees, one dealing with custom, the other with immigration. There was such a shortage of funds that it was very hard to see where this money would ever come from.

So if we are going to do that, I think we have to understand that we have to realign our priorities in order to do it, and that includes having personnel overseas when, in fact, our own ports of entry suffer right now from a shortage of personnel just bringing in tourists and trade, much less dealing with asylum-seekers.

So, yes, I would support a stronger financial commitment to the personnel necessary to process these people.

Ms. VELÁZQUEZ. Yes, I strongly add my voice to what Nancy Pelosi just said. It has to be comprehensive. When we are here discussing immigration reform, it has to be comprehensive reform that not only includes immigration law but also foreign policy.

I can assure you that, coming from Puerto Rico, an American citizen of Puerto Rican descent, I do understand why Haitians want to come to this country. They don't want to come to this country seeking jobs, they just want to leave Haiti because of the oppression and repression that they are suffering because of the human misery. They would love to come to this country just to have a vacation, not to leave their island.

So we need to enforce our foreign policy when it comes to human rights in those countries and also to add the resources that are needed so that we do an effective job. It is not only—and I share with Mr. Schumer—having personnel abroad, but we need to have trained personnel so that we offer a fair process.

Mr. SMITH. You are not saying we ought to admit, though, people for economic reasons alone, are you?

Ms. VELÁZQUEZ. No.

Mr. SMITH. OK. Thank you.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from New York.

Mr. SCHUMER. Thank you very much, Mr. Chairman. I won't use my 5 minutes. I just want to thank both of our witnesses for, really, their excellent statements.

I would say to Ms. Pelosi that the outlines that you have given I think are very interesting ones. In legislation we are trying to craft we ought to keep those in mind, not just having one person, not getting rid of the standard, something I am very mindful of in terms of fairness, and I think you have given us an excellent place to start. It gives me some hope that we can come up with a fair and rational bill.

And I would say to Ms. Velázquez, first, you are really doing an outstanding job representing the communities you represent, particularly the Chinese-American community, in New York. I know you represent both Chinatown in Manhattan and Sunset Park in Brooklyn, sort of on the borderlines, part of it, of my district, and they are lucky to have an advocate like you.

I think people look at either Chinatown or Sunset Park—and I didn't get to say this before, and I think it is important—and realize the positive contribution immigrants make to America. These are two communities that are buzzing. They are vibrant with activ-

ity. The vast majority of that activity benefits all Americans. It is hard work; it is, you know, the kind of thing that has made the country great; and I, for one, think that New York and America benefit from legal immigration in general and Chinese-American immigration in particular.

I have talked to some of the people there—you know, no organized way but just calling and this and that—and I think they also are mindful and understanding of the fact that the laws are out of control, that we have to do something, that problems like the *Golden Venture* occur in part because there really is no discrimination in the law between people who legitimately deserve asylum and people who are told, innocently themselves but by smugglers, “Hey, pay me \$30,000, I’ll get you into America,” and, of course, the poor person who does that not only doesn’t know that he or she is being asked to break the law but also ends up not leading the kind of life that they often think.

So, again, both your testimonies and your leaderships on this issue give me a great deal of hope that we can come to a better policy, a fair policy, and yet a policy that deals with the problems, and I want to thank both of you for taking time out of all your busy schedules to be here and help us with that.

Ms. VELÁZQUEZ. Thank you.

Ms. PELOSI. Thank you.

Mr. MAZZOLI. I thank the gentleman.

The gentleman from Florida.

Mr. CANADY. Thank you, Mr. Chairman. I have just a couple of questions.

Ms. Pelosi, you mentioned the coercive population policy or the asylum provisions related to that with respect to China, and you specifically mentioned an 18-year-old unmarried male coming in and receiving asylum based on a claim related to that policy. Do you know if, in fact, unmarried men are coming in from China and are being granted asylum on the basis of the policy with respect to coercive family planning?

Ms. PELOSI. Yes.

Mr. CANADY. Do you know how many?

Ms. PELOSI. I can get that information for you. I mean you could ask the administration about it.

Mr. CANADY. I will ask the administration about it, but you said unequivocally yes. What is the basis for your knowledge of that?

Ms. PELOSI. One of the other principles that I mentioned when I talked about what I thought our policy should be based on, I said we should be consistent, and one of the inconsistent messages—and I think we have to be concerned about the message—some of the inconsistent messages that are coming forth from our U.S. policy are that if you claim you are leaving because of family planning policy in China, it gives heart to some of these other people to get on a ship and come over and think that that is at least one arrow in their quiver.

So it is not a question of saying this number of people have claimed asylum on that basis—the administration, the Immigration Service, may have that information for you—but it is how it encourages people to seek asylum thinking, well, that is part of my right to asylum.

Mr. CANADY. With respect to that, let me ask you, do you know how many of the people coming in from China have claimed asylum on that basis in their initial contacts? I understand that a lot of claims may be raised after they talk with lawyers, but in terms of their initial contacts with the Immigration Service, do you know how many of them are actually raising that as the basis for their entry?

Ms. PELOSI. Mr. Canady, I do not know, but I didn't think it was a big issue. I wasn't paying very much attention to it, and then it was called to my attention that this was causing some confusion in terms of people thinking that this was a legitimate asylum. So I don't know the numbers, but I am sure they are available.

Mr. CANADY. OK. Back on the first question I asked about the unmarried males being granted asylum on the basis of the policy, what is the basis for your understanding that asylum is being granted to unmarried males on the basis of that policy?

Ms. PELOSI. Just as you described, that because of the family planning—

Mr. CANADY. This is a factual question. I asked if you knew if people were being granted asylum—

Ms. PELOSI. Yes.

Mr. CANADY. And you said yes. I just wonder who told you that. How do you know that? Because I don't think that is true.

Ms. PELOSI. Well, perhaps you can check with the administration when they testify, but it has been brought to my attention that this is confusing the issue as far as Chinese asylum-seekers are concerned, that they think this is a legitimate—and it has been; this was the Bush policy.

But I wasn't tracking it or looking for it as an issue; it was brought to my attention by those who said that this is a confused message that is going in there. So by virtue of people coming to my office and telling me this, and, not that I believe everything I read in the newspaper, but by extensive newspaper coverage of the issue quoting those in a position to know, that this is an issue.

Now whether you disagree that it should be the policy or not is one thing; whether it is happening or not, it is happening.

When I talk about consistent, I want to also just depart for a moment and mention one other inconsistency that confuses people, and that is, for example, if you are coming from Cuba you practically get the red carpet rolled out for you; they slap a work authorization in your hand before you even touch down. This is also an unclear message that goes out to other asylum-seekers because it is difficult for some and not difficult for others.

Mr. CANADY. I understand.

Let me follow up with one other question.

Ms. PELOSI. But, Mr. Canady, I will be happy to provide for the record and for you more information on the numbers of people.

Mr. CANADY. I think it is important that we get to the facts on that and find out exactly how the policy is operating and find out if people are actually being granted asylum in those circumstances.

But let me go back to the issue of summary exclusion and your concerns that you have raised about that. I think all of us would be concerned that any process we put in place not produce arbitrary results, but I think we are faced with a great dilemma. We

are faced with a large number of people coming into our ports of entry. We also have limited detention capacity. That means that a certain number of people are going to go out in the general population, or are going out in the general population, and once they are out there, they are gone, we have lost them, they are in, and they are not going to be removed. We don't have the resources to go out and find them and remove them once they go through the port of entry and are released.

That presents a big dilemma for us unless we are going to get involved in expanding our detention capacity in a way that I really don't think is practical. I don't think we have the resources to do that. That indicates to me, I think, that we have to consider some type of summary exclusion process that will allow us to turn people away at the port of entry.

Now I agree that there have to be safeguards built in so that we are certain that the people who are conducting the interviews and involved in that process there are the type of people who can make a determination that is not arbitrary. But if we go with some extended appeals process, we are going to end up with the same type of problem that we have now, because if that is available those people will leave the port of entry, they will go out into the general population, and they will be gone, and any changes we make will be cosmetic changes.

Mr. MAZZOLI. The gentleman's time has expired, but maybe, Nancy, if you wish to address a part of it.

Ms. PELOSI. Obviously we disagree on this, Mr. Canady, but I do think that there is a middle ground and that we should streamline the asylum process, but I do think that summary exclusion would be really a violation of the rights of the people seeking asylum, to which we have an international responsibility, and also it would be too big a price to pay for the freedom that our country stands for.

Mr. MAZZOLI. I think it ought to be noted, though, you know we sometimes lapse into terminology. "Summary exclusion" sounds like, "Out of my face, and you're back home." What has been primarily introduced by Mr. McCollum is an expedited handling of the case, and what the INS will forward at some point is an expedited handling in front of trained officers, with translators, people who understand in-country conditions, with the right of appeal to the court system.

So we are not talking about putting people off in a corner and then waiting for the next plane and sending them out. So we are talking about not so much summary, with all of the heavy baggage that that carries, as much as an expedited, streamlined, due process procedure.

The gentleman from Illinois.

Mr. SANGMEISTER. If I understand you—and I want you to understand, I'm playing a little bit of the Devil's advocate here, OK?

Ms. PELOSI. I understand.

Mr. SANGMEISTER. I heard both of you testify that you are hoping that these Chinese will—I have made notes here—"be furnished with counsel, with interpreters, there be prompt hearings," and I know we are going to have more testimony here and get more facts, but there are people that I see, from the limited knowledge that I have at this point, who have been able to raise or get commit-

ments somehow of \$20,000 to \$30,000, paying to, as I understand, a Chinese Mafia in order to get over here.

Aren't those people, if they can raise that kind of money, in a position that they ought to be following our regular immigration laws, looking to get here on quotas rather than just getting on a ship and coming over here? Have you got any thoughts on that?

Ms. PELOSI. Mr. Sangmeister, in most of those cases my understanding is that they are selling their future. When they come over here, they are practically indentured servants. Some of them have rounded up—their families have rounded up a down payment to get them on the ship, and then when they get over here, they have service for years to the gangs or whatever. They don't realize that necessarily when they come. Certainly we would prefer—not prefer, insist upon legal immigration. I am not condoning what they are doing, and many of these people are not political asylees.

What we are saying, when there is a political, well-founded fear of persecution, that someone is making that case, that they should have access to counsel in their language before somebody who understands the conditions in their country. We are not talking about saying anybody who is an economic refugee from any place in the world, "Pile on to a ship and come here, and we'll accommodate you any way we can." I don't want you to misunderstand what we are saying.

But your point about, if they have \$30,000, why don't they get on the waiting list in China? Most of them are selling their futures to come here. They will be enslaved really by the people who have brought them here until they pay off that money over a period of years.

Mr. SANGMEISTER. If those people are then successful in getting into this country, isn't that only encouraging the so-called Chinese Mafia to continue that kind of a process?

I mean how do we send the message back that this has got to stop?

Ms. VELÁZQUEZ. Stiffer penalties.

Ms. PELOSI. Stiff penalties. I said in my testimony we have to enforce our laws. As I said, Uncle Sam is not Uncle Sap. Strictly enforce the laws; prosecute the smugglers. We have to remedy that situation, but that is, I think, distinct from what is the right of political asylum under international tradition and law. I would make a distinction between legitimate political asylum-seekers and illegal aliens being smuggled into the country by some people for economic gain.

Mr. SANGMEISTER. I think that is a fine distinction that does have to be worked on; you are right.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

I understand the gentlelady's differentiation between not condoning the illegal smuggling of Chinese aliens but wanting a compassionate asylum process in the United States. But now this is where the refugee or asylee is normally handled outside of the country that is causing the problem for you. So I don't know where the Chinese are going to go, because I assume you want to end the smuggling that is going on today.

Ms. PELOSI. Absolutely.

Mr. FISH. In the course of this, I want to find out if you think, both of you think, that the 1989 Executive order is a magnet. As you know, the then President signed an Executive order under which anyone who is from a country with a family planning policy that involves forced abortion or coerced sterilization and, two; establishes that he or she has refused to abort or be sterilized is considered to have established a well-founded fear of persecution based on political opinion and therefore would be given enhanced consideration. Would you recommend that this Executive order be rescinded?

Ms. PELOSI. As I said earlier, I would make a distinction between men and women as far as that Executive order is concerned, but if that distinction could not be made, I would, yes, recommend that that aspect of the Executive order be rescinded.

Mr. FISH. Do you agree with that?

Ms. VELÁZQUEZ. That is my position.

Mr. FISH. Now the other thing I think we are going to have to face up to is—and I think some facts and figures illustrate it—our colleagues have talked about 250,000/260,000 people in the pipeline waiting to have their asylum claim adjudicated. In fiscal year 1992, according to the information that I have, there were—I am rounding out these figures—103,000 applications, and we have a staff of 297 with approximately 150 of them adjudicators to cope with this. Australia, with just under 10,000—one-tenth—has a staff of 460. Sweden, 83,900; staff of 800.

I think that the time is going to come, and I am certainly going to urge this view on the committee, that if we are going to have any hope at all of dealing with this backlog, we are going to have to have a far greater number of personnel and resources addressed to it, and I just would like to ask for your support when the time comes—and the Congress is not very hospitable for add-ons—that we may well need to quadruple, even more so, the number of people involved if we are to address this problem the way other countries have.

Mr. MAZZOLI. Thank you.

That is very interesting. We are going to have some witnesses, and I want them to know that I want to ask some questions, too, about this matter of Chan, which is the case under which all these interim orders and final pending orders are being filed.

I don't think a presumption was established by the Executive order of April 1990. I think the problems come under the interpretation by the Immigration Service's General Counsel of what the officers in the field have to interpret, and I think it is under that that we have the situation where, in fact, single men claiming that they would be subject to coercive sterilization were they to go back have claimed some form of asylum, and where married men whose spouses are in China have been able to claim asylum because of what could happen to their spouse. I am told that there is a pending final rule which says that the spouses cannot claim that unless they are making joint application. But I am going to ask the question of how many have filed, how many people have been awarded, whether what we hear, this 85-percent approval rate, is in fact or fancy, because I have heard it both ways.

So, anyway, I want to thank the gentleman for bringing up that issue.

The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

I, unfortunately, was unable to hear the testimony of my two colleagues, but, Ms. Pelosi, I do have your statement before me, and I want to just echo some of the things that you say in your statement. I believe that you are correct in the three principles that you set forth, that we must distinguish between legal and illegal immigration and make sure we are talking about protecting the rights of those who have a valid claim for asylum.

I happen to also represent a very large Chinese community in my district as well. I am landlocked, so I don't have the problem of vessels coming to my district, but I do have a very large Asian-American population in my district, and I agree with you that we see prosperity comes from immigration and the immigrants themselves and what they do for our country.

Let me ask you one question about the issue of asylum—and I don't know if people have approached you in your district on this—but there is talk about trying to expedite the process of determining whether someone should be eligible for asylum or not, and the concern is with regard to the standard of proof that will be required of an asylum-seeker.

And actually, Ms. Velázquez as well, if you have any particular comments on this.

Do you have any opinions as to what standard of proof should be required that an asylum-seeker establish in order to be able to stay? And the second part is: Do you believe that there should be some form of review of an initial decision made by some reviewer, be it the immigration officer or something more that should be provided at an additional review that should be provided to the asylum-seeker that goes beyond just the immigration officer maybe who does the initial review?

Ms. VELÁZQUEZ. I don't have any statement in that regard at this moment.

Ms. PELOSI. I believe that we have to be very careful about how we establish—our tradition has been that if someone is sent back to a country that is repressive and they have a well-founded fear of persecution, sometimes that fear of persecution is enhanced because they have left the country and now they are going back—in the case, for example, of Haiti, which is so close by and where we are sending people back, that their danger is enhanced by the fact that they tried to leave one time and are going back.

We should have standards for asylum-seekers, but I think the committee should proceed very, very carefully how they toughen that standard because it could, in fact, be a summary exclusion by virtue of the obstacle that it presents.

That is why I think it is so important, Mr. Chairman and Mr. Becerra, that the INS officers, when you talk about, well, they will be speaking the language and this and that, asylum-seekers come from a variety of countries, and in any one port in San Francisco you might get a Haitian who speaks French 1 minute and a Chinese next and a Latino Spanish-speaking person next, and different cultures, different languages, and the rest, and I don't know that

we can have that much expertise at all these ports of entry where an INS official is going to have to make a judgment about cultures and political conditions in a person's country.

Some of our asylum-seekers are very famous; some are not. Some are from classes of people who are repressed, and some are poor people who are repressed and are not as sophisticated in terms of making their case. So I would be very careful about that.

Your second question, Mr. Becerra?

Mr. BECERRA. The length of time you would provide for an asylum-seeker to have review.

Ms. PELOSI. Oh, yes. We did go into that a bit, and I definitely think that there should be a process of appeal beyond the INS officer for an asylum-seeker. It doesn't mean that we shouldn't streamline the process, it doesn't mean that we shouldn't send a clear message that we are serious about protecting the rights of those who have a well-founded fear of persecution, but we are not here to look the other way while economic refugees flood our country, and that is why my hope is that this is a time of transition for us, that this problem won't just grow, that this problem where as, hopefully, the world economy turns around, and hopefully when we have a stronger commitment internationally to human rights and promoting of democratic principles and respect for ethnic minorities, there will be less need for people to come to our country or any of the countries where they are seeking asylum and that what Mr. Fish was pointing out in terms of the numbers, et cetera, and other members of the committee—that, as I say, this would be a transition time and not just an ever growing number of asylum-seekers coming here.

If I may just say one thing, Mr. Chairman, in closing, Mr. Canady, I want to remove all doubt in your mind as well as in Mr. Fish's that I abhor the forced abortion policy of China. It was not because I didn't think that that was grounds for a well-founded fear of persecution in terms of it being abhorrent, it is just in terms of the practical application of it, I believe it just opens us up for an interpretation of that, opens us up for something that we really could not handle.

Mr. MAZZOLI. The gentleman's time has expired, and I think that is a very good point to wrap up on, because I think it is not so much the President's Executive order, which is founded on a basis I would generally agree with, but it is how that has been interpreted and how that filters out to the field.

The last thing: I wish, Nancy, I shared your optimism about the turnaround in the world's economy, because if I see anything in Western Europe, it is more people, more unemployed people. We have got more refugees all over the place. Ms. Ogata has just suggested, as U.N. Commissioner for Refugees, that there are 19 million people she would classify as refugees. She has requested \$1.300 billion from the nations of the world. She has only got pledges of less than half-a-billion of that money to provide succor and relief to the people.

So I think what we are having is inexorable pressure building up all over the world to send more and more people by whatever means they can, by hook or crook, seize to come into this country. So I think we have to be careful and sensitive and responsible and

not mean-spirited. At the same time we are never going to have everything we want. You are on the Appropriations Committee. You know how you have had to cut back and cut back.

So we have a limited amount of assets and resources to do this tough job, so we may not be able to do it with what one of our witnesses a few weeks ago said was excess due process. I think there is such a thing as excess due process, and I think there is such a thing as due process. So what we want to do is give due process, constitutional due process, but not necessarily go beyond it.

For the final questions then for our panel, the gentleman from Florida.

Mr. McCOLLUM. Thank you, Mr. Chairman. I really apologize for having to step out for a phone call a moment ago, but I do know what you are saying, and I hope both of you will look carefully at the product that Ron and Chuck and I are going to put out here in the next day or so. I think you are going to find, first of all, we don't change the standard that you are worried about that was raised; and, No. 2, the statute of limitations question that you raised we discussed yesterday, and the date on that was moved from 7 days from when you arrived to 30, an effort really to try to give them some time, and yet we have got to do what Ron says, we have got to find some way to expedite this process and not have everybody coming and claiming asylum to beat the system.

I think one other thing you will find is, we came up with a double check rather than single check at the airport, plus, of course, the opportunity to go to court but not in the same manner as now. It is a little complicated, and I can't describe it all to you, but it is a lot better than perhaps you are envisioning it being from the protection standpoint.

Ms. VELÁZQUEZ. If I may?

Mr. McCOLLUM. Certainly.

Ms. VELÁZQUEZ. I share with you your concerns, but I just would like to stress my concerns that those personnel who will be processing asylum applications should have a profound and deep understanding of the political conditions of those countries where those people are coming in. Otherwise, we could be very unfair.

Mr. McCOLLUM. We would agree with that, and we don't want anybody—I don't want anybody—to be screened out who has a legitimate questionable claim. In other words, you go through the process of going through the regular process to find out whether there really is a fear of persecution, if there is any reasonable doubt about whether they have a claim or not. We all share that common theme.

Thank you very much.

Mr. MAZZOLI. Thank you very much. We really appreciate it. It has been excellent testimony. A lot of what we see here foreshadows the rest of today.

[The prepared statement of Ms. Pelosi follows:]

STATEMENT OF REP. NANCY PELOSI
House Subcommittee on Immigration
June 30, 1993

THANK YOU, MR. CHAIRMAN, FOR THE OPPORTUNITY TO ADDRESS THIS COMMITTEE.

MY CONGRESSIONAL DISTRICT HAS A DEEP INTEREST IN THE SUBJECT AT HAND TODAY. SAN FRANCISCO HAS SEEN TWO VESSELS THAT HAVE BEEN INTERCEPTED SMUGGLING INDIVIDUALS FROM MAINLAND CHINA.

BUT MY DISTRICT HAS A DEEPER INTEREST IN THIS ISSUE BECAUSE SAN FRANCISCO HAS ONE OF THE LARGEST CHINESE-AMERICAN COMMUNITIES OF ANY AMERICAN CITY AND, INDEED, ONE OF THE LARGEST CHINATOWNS IN THE ENTIRE COUNTRY.

SAN FRANCISCO HAS BEEN BUILT BY AND ENRICHED BY IMMIGRATION FROM CHINA. THE CHINESE AMERICAN COMMUNITY HAS BEEN A SOURCE OF GREAT STRENGTH, INNOVATION, AND COMMUNITY AND CIVIC PRIDE.

THEREFORE, I WANT TO BEGIN MY TESTIMONY WITH A SIMPLE PRINCIPLE: LEGAL IMMIGRATION, WHICH IS ALLOWED UNDER OUR CURRENT LAWS, IS A POSITIVE BENEFIT TO THIS COUNTRY. LEGAL IMMIGRATION CAN AND HISTORICALLY HAS BEEN ABSORBED BY THIS COUNTRY WITH LITTLE DIFFICULTY AND WITH GREAT RESULTS. IT REINVIGORATES OUR NATION'S CULTURE AND CHARACTER.

WE MUST BE CAREFUL DURING THESE DISCUSSIONS NOT TO CONFUSE THE ISSUES OF LEGAL AND ILLEGAL IMMIGRATION.

A SECOND PRINCIPLE IS THAT OUR COUNTRY, THE GREATEST DEMOCRACY IN THE WORLD, MUST MAINTAIN ITS HISTORIC TRADITION OF BEING A HAVEN FOR THOSE FLEEING STATE-SPONSORED PERSECUTION. INDEED, ASYLUM IS A NECESSARY COMPONENT OF AMERICAN FOREIGN POLICY AS WELL AS AN IMPORTANT INTERNATIONAL PRINCIPLE OF JUSTICE.

A FINAL PRINCIPLE IS THAT ANY REFORM MEASURES MUST BE COMPREHENSIVE AND CONSISTENT.

THEREFORE, ANY REMEDY MUST BE DONE DELIBERATELY AND WITH GREAT CARE AND SENSITIVITY TO ENSURE THAT WE REMAIN TRUE TO OUR LONG HELD PRINCIPLES GOVERNING IMMIGRATION POLICY.

WITH THESE PRINCIPLES IN MIND, LET ME ADDRESS THE PROPOSALS DEALING WITH ILLEGAL SMUGGLING AS THEY HAVE BEEN ADVANCED BY THE PRESIDENT AND MEMBERS OF CONGRESS.

FIRST, I COMMEND THE PRESIDENT AND ATTORNEY GENERAL RENO FOR THEIR RECENT POLICY DIRECTIVES AIMED AT STOPPING THESE SMUGGLING OPERATIONS, AT THE SOURCE, ON INTERNATIONAL WATERS, AND IN THE UNITED STATES.

I SUPPORT ADMINISTRATION PROPOSALS TO REDUCE THE WAIT TIME FOR AN ASYLUM HEARING. EXPEDITED HEARINGS ARE IN THE BEST INTERESTS OF THE APPLICANT AND THE UNITED STATES. I AM CONCERNED ABOUT LEGISLATIVE PROPOSALS THAT WOULD CHANGE THE STANDARD OF PROOF FOR CLAIMING ASYLUM.

THE ACTUAL NUMBERS OF PEOPLE WHO APPLY AND WIN ASYLUM EACH YEAR PALE IN COMPARISON TO THE NUMBERS WHO, FOR ECONOMIC PURPOSES, ILLEGALLY CROSS OUR BORDERS EACH YEAR. TO REFORM ASYLUM PROCEDURES TO DEAL WITH ILLEGAL IMMIGRATION IS NOT THE SOLUTION TO THIS PROBLEM.

I AM ALSO NOT SUPPORTIVE OF REQUIREMENTS THAT IMPOSE A STATUTE OF LIMITATIONS FOR FILING AN ASYLUM CLAIM. WITHOUT A RIGHT TO COUNSEL, WITHOUT ADEQUATE NOTICE, AND WITHOUT AN ADEQUATE OUTREACH SYSTEM, A TIME BAR TO MAKING A CLAIM IS UNREASONABLE TO ASK OF SOMEONE UNFAMILIAR WITH OUR LANGUAGE, AND OUR LAWS.

I URGE YOU TO REJECT LEGISLATION WHICH WOULD ALLOW A SINGLE INS OFFICIAL THE POWER TO RENDER SUMMARY EXCLUSION OF ASYLUM CLAIM WITHOUT A RIGHT OF REVIEW OR APPEAL.

IT IS WELL KNOWN THAT A PERSON FLEEING STATE-SPONSORED REPRESSION LEARNS NOT TO CONFIDE IN PEOPLE WEARING THE OFFICIAL UNIFORMS OF GOVERNMENT; TO EXPECT THAT, WITHIN 5 MINUTES OR EVEN 5 HOURS, THEY WILL PLACE ENOUGH TRUST IN A STRANGER IN UNIFORM TO TELL THEM OF EXTREMELY PERSONAL, VERY TRAUMATIC EVENTS IS AN UNREASONABLE REQUEST.

ONE INS OFFICIAL, WHO MAY BE UNFAMILIAR WITH THE LANGUAGE AND THE CULTURE AND COUNTRY CONDITIONS OF THE POTENTIAL ASYLEE, WOULD RUN AN UNACCEPTABLE RISK OF SENDING BACK, TO CERTAIN PERSECUTION, A LEGITIMATE CANDIDATE FOR ASYLUM.

MR. CHAIRMAN, LET ME CONCLUDE BY THANKING YOU FOR YOUR LEADERSHIP ON ADDRESSING THE GRAVE ISSUE OF SMUGGLING OF ILLEGAL ALIENS TO THIS COUNTRY. BUT I CANNOT STRESS ENOUGH THE GENUINE, LEGITIMATE FEAR THAT SOLELY ADDRESSING THIS ISSUE IN THE CONTEXT OF THE RECENT SMUGGLING INCIDENTS CAN AND WILL LEAD TO FEAR AND SUSPICION, EVEN XENOPHOBIA, OF DECENT, HARD-WORKING AMERICANS WHO MAY BE OF THE SAME RACE, ETHNIC BACKGROUND AS THOSE WHO HAVE SOUGHT TO COME HERE ILLEGALLY.

THERE ARE THOSE WHO WANT TO UTILIZE THE TACTICS OF FEAR TO STOP ALL IMMIGRATION TO THIS COUNTRY. THEY WANT TO HIJACK LEGITIMATE CONCERNS OVER THE SECURITY OF OUR BORDERS INTO AN ANTI-IMMIGRANT MOVEMENT THAT WOULD CLOSE OUR BORDERS TO EVERYONE.

THIS WE, THE UNITED STATES OF AMERICA, CANNOT DO. THIS WE CANNOT DO AS A MATTER OF FAIRNESS TO FAMILIES WHO HAVE PLAYED BY THE RULES AND WAITED PATIENTLY FOR THEIR LOVED ONES TO ARRIVE; AS A MATTER OF PRINCIPLE IF WE ARE TO BE TRUE TO OUR HERITAGE AS A HAVEN FOR THE OPPRESSED; AND A MATTER OF OUR OWN COUNTRY'S ENRICHMENT WITH THE ARRIVAL OF COURAGEOUS AND INDUSTRIOUS NEWCOMERS TO AMERICA.

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE FOR THIS OPPORTUNITY TO TESTIFY.

Mr. MAZZOLI. I would like our panel then of Laurie Ekstrand, the Associate Director of the General Accounting Office, accompanied by James M. Blume and Jay Jennings, also of the GAO, who have done some work for the committee on a project.

Any statements would, of course, be made a part of the record, without objection, and while Judy is doing her technological work up front here that no one of us is qualified or smart enough to do, we will try to hook up our red and green, go/stop system here.

Well, thank you very much, and thank you, Judy.

Ms. Ekstrand.

STATEMENT OF LAURIE E. EKSTRAND, ASSOCIATE DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JAMES M. BLUME, ASSISTANT DIRECTOR; JAY JENNINGS, ASSISTANT MANAGER; AND CLEO ZAPATA, EVALUATOR IN CHARGE

Ms. EKSTRAND. Thank you, Mr. Chairman and members of the committee.

I am very pleased to be here today to discuss enforcement problems confronting the INS relating to aliens entering and remaining illegally in this country, including the administration's June 1993 plan to combat alien smuggling by organized crime syndicates.

This committee is well aware of the enormous size of the illegal alien problem confronting this Nation: an estimated 3.3 million illegal aliens residing in the United States and hundreds of thousands entering the country undetected each year. The key to controlling the illegal entry of aliens is to prevent their initial arrival. Once they arrive, their removal is very difficult due to a combination of: first, the aliens' use of relief provisions of the Immigration and Nationality Act, such as applying for asylum to avoid or delay their deportation; second, INS' limited detention space, which has led to releasing most aliens even though they may not appear for their deportation or exclusion hearings; and, finally, the limited adverse consequences to the aliens for failure to appear at deportation hearings.

In fiscal year 1992, about 37,000 aliens were deported. Compare this to the millions residing here illegally and hundreds of thousands who enter illegally each year, and this becomes a very small number.

According to INS estimates, between 1988 and 1990 about 489,000 aliens were subject to detention for such reasons as awaiting deportation or accusations of criminal activity. Clearly, the 6,259 detention beds available to INS to hold illegal aliens means that most aliens subject to detention will be set free on bond or on their own recognizance. INS' planned expansion to 8,600 beds by 1996 will not likely do much to change the ratio between aliens subject to detention and detention space available.

The lack of detention space speaks to the need to seriously consider options for dealing with illegal immigration that prevent illegal aliens from entering the country. One such potential option is preflight inspection. Under this program, INS inspects passengers and their documents at foreign airports and identifies those who

are inadmissible to enter the country. INS does not permit these passengers to board airplanes bound for the United States.

Preflight inspection is currently in place at airports in a handful of foreign countries and primarily intended to reduce delays in processing of incoming passengers at some of our busiest international airports. We believe that preflight inspection may hold promise to reduce illegal entry at our airports in addition to reducing airport congestion. In our opinion, expansion of this program deserves serious consideration and evaluation.

Now I would like to change the focus and turn to the administration's plan to combat alien smuggling. Since August 1991, U.S. authorities identified 14 smuggling incidents by boat that involved direct release of hundreds of aliens into the country. Organized crime syndicates were identified as responsible for these incidents. In 1992, about 70,000 apprehended illegal aliens were being smuggled into the United States.

On June 18, 1993, President Clinton announced a plan to combat alien smuggling by organized crime syndicates. The plan involves numerous Federal agencies including the INS. The four components include actions to strengthen law enforcement efforts, to combat smuggling at its source, to interdict and redirect smuggling ships in transit, and to expedite the processing of exclusion procedures.

As the last two components indicate, the administration's plan to combat alien smuggling by organized crime syndicates focuses on interdicting smuggled aliens when possible and, when not able to interdict, detaining aliens arriving by boat and expediting their cases. We support the administration's effort to interdict illegal aliens before they can arrive here as a means to deter smuggling.

For those who are not interdicted, if the plan is to be effective, our work has shown that problems relating to alien detention and removal will have to be addressed. The plan presently does not address these issues.

As indicated, the administration's plan calls for detaining most of the aliens who enter in conjunction with criminal smuggling activities and expediting their cases. For INS to detain these aliens even for a relatively short period of time, it will have to release other aliens or obtain additional detention resources.

For example, detaining the 70,000 aliens caught being smuggled into the United States in 1992 for the average number of days excludable aliens were held during that year would cost just under \$200 million, or about one-fifth of INS's total budget.

Finally, while focusing on stopping alien smuggling on board ships, the plan does not seem to address other, perhaps more active areas of alien smuggling such as that along the Southwest border. Therefore, the plan does not provide a comprehensive strategy for dealing with alien smuggling.

Effective resolution of smuggling and other illegal alien issues will require Congress and the administration to deal with the general issues of how best to control our borders and remove aliens who are here illegally. Complex and sensitive issues relating to our relationships with other nations, humanitarian concerns related to equitable treatment of aliens, and difficult budgetary tradeoffs are all part of the equation in resolving illegal alien issues.

This concludes my summarized statement, and we would be glad to answer any questions the subcommittee may have.

Mr. MAZZOLI. Thank you very much, Ms. Ekstrand. An excellent statement, and well within your time; we appreciate it. GAO once again stands up to its vaunted tradition as not overstaying its welcome and getting right to the facts.

Ms. EKSTRAND. Thank you.

[The prepared statement of Ms. Ekstrand follows:]

PREPARED STATEMENT OF LAURIE E. EKSTRAND, ASSOCIATE DIRECTOR,
ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT
DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the enforcement problems confronting the Immigration and Naturalization Service (INS) related to aliens illegally entering or remaining in this country, including the administration's June 1993 plan to combat alien smuggling by organized crime syndicates. We addressed many of these issues in our previous work for this committee--Immigration Control: Deporting and Excluding Aliens From the United States (GAO/GGD-90-18, Oct. 26, 1989) and Immigration Control: Immigration Policies Affect INS Detention Efforts (GAO/GGD-92-85, June 25, 1992).

As long as political unrest and economic hardships persist throughout the world, millions of people will continue to flee to the United States. Hence, the United States will continue to face complex and difficult immigration issues, such as

-- what should be done to prevent aliens from entering illegally,
and

-- what should be done to remove aliens who are here illegally.

These issues are, for the most part, beyond the direct control of INS. INS' task is further compounded by a lack of consensus on the part of both Congress and the American people concerning

immigration policy and its enforcement. Further, INS has limited resources with which to stem the flow of illegal aliens. For example, it cannot detain most of those aliens whom it believes should be denied entry or pursue those aliens who remain here illegally.

BACKGROUND

INS faces three very large jobs in relation to illegal immigration. First, from the millions of travellers who enter this country each year at ports of entry, it must identify those who should be excluded from entry. Second, it must stop the millions of aliens seeking to enter the United States between the ports of entry. Third, it tries to locate the illegal aliens living within our borders and take steps to start the deportation process. All of these aliens are subject to INS detention pending resolution of their cases.

Once here, aliens can request relief from deportation, such as by applying for asylum. Further, aliens can appeal adverse decisions regarding their expulsion or deportation from the country. While their appeals are being considered, they remain in the country. INS can detain the aliens while their cases are being heard, but INS usually releases them because it has limited detention capability.

To provide perspective on the size of the flow of illegal aliens, in fiscal year 1992, INS

- inspected about 495 million people, including their documents, who sought to enter at ports, of whom about 810,000 were denied entry at land ports of entry and about 94,000 at air and sea ports of entry;
- apprehended about 1.2 million aliens who tried to enter illegally between ports of entry, of whom 70,000 were being smuggled into the country; INS estimates that for every alien apprehended about 2 aliens successfully enter;
- deported about 37,400 aliens; and
- detained about 10,800 excludable aliens¹ for an average of 45 days.

Since August 1991, U.S. authorities identified 14 smuggling incidents by boat that involved the direct release of hundreds of aliens into the country. Organized crime syndicates were identified as responsible for these incidents.

¹Excludable aliens are those persons to whom INS denies admission to the country.

To provide perspective on the illegal alien population that INS is responsible for locating,

-- the Bureau of Census estimated that about 3.3 million aliens were in the country illegally in 1990;

-- INS estimated that about 318,000 aliens overstayed their visas in fiscal year 1991 (the most current data available);

-- Justice had about 48,000 excludable or deportable aliens' cases or appeals pending in fiscal year 1992; and

-- INS detained about 82,300 deportable aliens for an average of 26 days in fiscal year 1992.

In response to increased responsibilities and demands on INS, its budget has grown. Between 1975 and 1992, INS' appropriations more than tripled to over a billion dollars and the number of staff about doubled. In addition to its appropriations, INS is authorized to collect and use fees from inspections at airports and seaports. INS can use these fees to pay for the detention and deportation costs for excludable aliens arriving at seaports and airports. For fiscal year 1992 INS used inspection fees of \$30.4 million to detain and deport excludable aliens.

ADMINISTRATION'S PLAN TO COMBAT ALIEN SMUGGLING

On June 18, 1993, President Clinton announced a plan to combat alien smuggling by organized crime syndicates. The plan involves numerous federal agencies, including INS. The four components include the following actions:

- To strengthen law enforcement efforts, Justice will review prosecution strategies to combat smuggling and will support legislation to increase penalties for alien smuggling.
- To combat smuggling at its source, federal agencies will work with foreign nations to suppress alien smuggling and will collect intelligence information about smuggling activities.
- To interdict and redirect smuggling ships in transit, the Coast Guard will board suspected ships involved in smuggling aliens and, if practical, will escort the aliens to the nation of the ship's registry or the nearest non-U.S. port.
- To expedite the processing of exclusion procedures, INS will detain most smuggled aliens until their cases are resolved, and Justice will propose legislation to expedite adjudication of their cases.

PROBLEMS IN CONTROLLING THE FLOW OF ALIENS

Immigration policy and international relations affect INS' ability to prevent the arrival or entry of illegal aliens. The key to controlling the illegal entry of aliens is to prevent their initial arrival. Once they arrive, their removal is very difficult due to the combination of

- the aliens' use of the relief provisions of the Immigration and Nationality Act, such as applying for asylum, to avoid or delay their deportation;
- INS' limited detention space, which has led it to release most aliens, even though they may not appear for their deportation or exclusion hearings; and
- the limited consequences to the aliens for their failure to appear at their deportation hearings.

What Issues Warrant Attention To Prevent Illegal Entry?

INS is confronted with the problem of trying to stop hundreds of thousands of aliens who attempt to enter the country illegally. Immigration policy is affected by the following issues, which are related to the prevention of illegal entry:

- foreign policy objectives of maintaining friendly relations with neighboring countries;
- the economic disparities between the United States and other nations, which attract illegal immigrants;
- conflicts between trade facilitation objectives calling for efficient flow of goods across the border and immigration control needs calling for better documentation and closer scrutiny of cross-border human traffic;
- the reliance of U.S. employers on inexpensive labor, legal and illegal, from other countries, mainly from south of the United States; and
- the reliance of the other countries' economies on money earned in the United States and returned and spent in those countries.

Other issues include (1) the feasibility and effectiveness of different approaches to improved border control; (2) humanitarian concerns, such as equitable treatment of aliens of different nationalities and divided families; and (3) cost considerations and trade-offs, such as choosing between expenditures for detaining aliens or preventing their illegal entry.

Preflight inspection program--One approach to preventing illegal alien entry is the preflight inspection program. Under the program, INS inspects passengers and their documents at foreign airports and identifies those who are not admissible to this country (excludable). INS does not permit these passengers to board airplanes bound for this country. This measure could reduce the number of potentially excludable aliens entering the country at U.S. airports and thus reduce the number of illegal aliens who are subject to detention. Some INS officials believe that INS should concentrate more on preventing unauthorized aliens from arriving in the United States.

The preflight program is currently in place at airports in Ireland, the Bahamas, Aruba, Canada, and Bermuda. An INS New York district report, dated May 23, 1991, estimated that by expanding the preflight inspection program to Amsterdam, Brussels, Frankfurt, London, Paris, and Rome, INS would eliminate almost one-half of the inspections of foreign arrivals and approximately 25 percent of exclusion cases at John F. Kennedy International Airport.

INS needs to address a number of issues if the program is to reduce the number of aliens who enter the country at our international airports. INS has to determine how many and which foreign airports should have the program and at those airports ensure that all airlines participate. The program would have to be operated in airports in a large geographic area so that aliens could not easily

select a non-preinspection airport. Also, INS has to consider the cost to staff the program at foreign airports and to obtain the cooperation of the foreign governments.

What Should Be Done To Remove Aliens Illegally Here?

In removing illegal aliens from the country, INS is confronted with the almost impossible task of trying to locate and remove those aliens it believes should not remain here. INS does not have sufficient resources to detain the millions of aliens who are subject to detention or who have been ordered deported. Consequently, aliens INS apprehends are generally released pending the resolution of their deportation hearing.² Our past work indicated that some aliens who were released did not appear for their hearings. INS did not have sufficient resources to reapprehend them.

In our October 1989 report on deporting and excluding aliens from the country,³ we pointed out problems INS had in deporting aliens. For example, 27 percent of the aliens in our sample⁴ had not appeared for their scheduled deportation hearings, which

²Mexican aliens whom INS apprehends can be returned immediately to Mexico if they agree.

³Immigration Control: Deporting and Excluding Aliens From the United States (GAO/GGD-90-18, Oct. 26, 1989).

⁴We analyzed random samples of deportation cases for 1987 in INS' New York and Los Angeles District offices.

effectively stopped resolution of their deportation cases. While their nonappearance may have been attributable to not being notified by INS of the time and place of their hearings, it may also have been due to the general lack of repercussions for failing to appear. In fact, our work has shown the deportation component of the immigration policy had not resulted in the removal of significant numbers of aliens. If it is to be an effective component, it must be improved. But deciding how far to go in terms of strengthening the deportation process is inextricably related to the issue of how Congress wants the immigration laws to be enforced.

As a result of our report, the Immigration Act of 1990 provides that aliens who have been notified of the deportation hearing and still fail to appear are to be ordered deported in absentia. While this does provide a consequence to the alien for nonappearance, INS still has to locate the alien. Further, should INS locate the alien, it has to use its limited detention space until the alien can be deported. INS, also, has to obtain airline tickets and authority from the alien's country to return the alien.

In our June 1992 report on INS detention efforts,⁵ we pointed out that INS is faced with a complex problem of coping with the hundreds of thousands of aliens it apprehends. INS believes that

⁵Immigration Control: Immigration Policies Affect INS Detention Efforts (GAO/GGD-92-85, June 25, 1992).

detention is a deterrent to the flow of aliens illegally entering the country. It reported some success in temporarily reducing the flow of illegal entry in three specific situations. For example, to meet a dramatic increase in Central Americans illegally entering the United States in 1989, INS detailed staff to South Texas, opened temporary detention camps, and instituted a 1-day expedited review of asylum applications. According to the former INS Commissioner, these actions reduced the average daily apprehensions of non-Mexicans along the Texas border from 147 to 72. However, INS does not have the resources (e.g., staff and detention capability) to maintain such efforts for extended periods or to detain all of the aliens whom it believes that it should.

According to INS estimates, between 1988 and 1990 about 489,000 aliens were subject to detention for such reasons as awaiting deportation or being criminals. INS' planned expansion from 6,259 to 8,600 beds by 1996 will not significantly alleviate the shortage of detention space. Detaining all such aliens in current available facilities is impractical and cost-prohibitive.

Given the average 23 days of detention per alien in 1990, INS can detain about 99,000 aliens a year at its current facilities. INS has released criminal aliens and not pursued illegal aliens because it did not have the detention space to hold them. The recent surge of aliens trying to enter the country exacerbates an already

difficult situation--what to do with the increasing number of aliens INS apprehends.

CONGRESS AND THE ADMINISTRATION NEED TO
ADDRESS IMMIGRATION POLICY ISSUES

INS believes that detention is a deterrent to the flow of illegal aliens entering the country. It reported some success in temporarily reducing the flow of illegal entry in three specific situations, as the Texas example shows. However, the resources needed for such detention projects cannot be sustained nationwide or for extended periods of time because of budget constraints. Further, INS' planned expansion of its detention capacity is small in relation to the number of illegal aliens who are subject to detention.

The administration's plan to combat alien smuggling by organized crime syndicates focuses on interdicting and detaining aliens arriving by boat and on expediting their cases. If the plan is to be effective, our work has shown that problems related to alien detention and removal will have to be addressed. The plan presently does not address these issues.

We support the administration's efforts to interdict illegal aliens before they can arrive here. Our work has shown, however, that after their arrival INS has limited space to detain them and has difficulty in removing them. Further, unlike the situation with Mexicans, INS would not be able to simply return these aliens to

their country of citizenship. INS needs tickets and authorization from the receiving country.

While focusing on stopping alien smuggling on board ship, the plan does not address other areas of alien smuggling, such as along the southwest border. Therefore, the plan does not provide a comprehensive strategy for dealing with alien smuggling. The administration's plan calls for detaining most of the aliens who enter in conjunction with criminal smuggling activities and expediting their cases. In order for INS to detain these aliens, even for a relatively short time period, it will have to release other aliens or obtain additional detention resources.

Another approach to preventing illegal alien entry, including those being smuggled, is the preflight inspection program. An expanded preflight inspection program may hold promise to reduce illegal entry at our airports. The preflight inspection program is presently in place at relatively few international airports; consequently, there are numerous routes open to aliens to come to this country without preinspection. In our opinion, expansion of this program deserves serious consideration and evaluation. However, while the program could reduce the number of illegal aliens trying to enter the country at U.S. airports, INS still would be faced with an overwhelming number of aliens trying to enter the country elsewhere.

We cannot forget that efforts to tighten the nation's borders and to expedite the expulsion of illegal aliens must take into account the plight of refugees escaping intolerable conditions and their rights to constitutionally based protections. The efforts also must deal with such complex and sensitive issues as potential strains in our relationships with other nations, humanitarian concerns relating to equitable treatment of aliens, and difficult budgetary trade-offs.

Effective resolution of these issues will require Congress and the administration to decide how best to control our borders and remove aliens who are here illegally here. Until these issues are more fully resolved, it is unrealistic to expect INS to effectively control the flow of aliens illegally entering and remove those aliens illegally remaining here.

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This concludes my prepared statement. I would be pleased to answer any questions the Subcommittee may have.

Mr. MAZZOLI. I really found your statement excellent in every respect. It capsulated everything we have, all the things we are not doing, and you mentioned in that one page of problems everything from foreign policy problems to the ambivalence in the American psyche about this whole thing, and we heard that in the first panel today.

Let me just mention one thing as much for emphasis for our future witnesses as anything, and that is the fact that, while you speak about this plan, I am not sure there is such a thing as a plan. I am going to wait for the administration to tell us what their plan really is.

We have seen everything from the Rose Garden statement to all of the press releases, but I haven't seen much of anything implemented. We don't really get much information about what is going to be happening first, what sequence of events, how many dollars they are going to spend. We could draft one of these statements sitting around this table, but to pull it together, as you have pointed out, is very much more difficult. First of all, it doesn't talk—at least the President hasn't—about the southwest border, and if you are talking about that, I think a lot of the Chinese that wind up in the districts represented by the gentlewomen who were here earlier are coming across the Mexican border.

I think one of the key ring leaders of this China operation is a young guy of 27. Now he is back in Fujian, but he came, after two or three times in and out of the country, he wound up coming back through Mexico.

So whether we are talking about the Chinese situation or general illegal entry, we have got to concern ourselves with the Southwest border, which is really what Mr. Gallegly has been saying for quite some time.

On page 12 of your statement, once again talking about the administration plan, which is perhaps giving it a status it doesn't at this point actually have, but, nonetheless, to combat alien smuggling by organized crime syndicates, first you focus on the interdiction and the things like Mr. Schumer, to his great credit, is talking about, which is preclearance. Then, if they arrive, then you detain them, and you try to expedite their exit. But you say if the plan is to be effective GAO's work has shown that problems relating to alien detention—and the numbers are clear, 8,600 beds by 1996 and 490,000 that could qualify for a bed—detention and removal, deportation, summary exclusion, expedited exclusion, those will have to be addressed. I don't think there is any way to put the thing down more succinctly than you did.

Let me ask you two questions. On page 10 of your statement, Ms. Ekstrand: The 1990 act provides for an in absentia hearing on the question of deportation. Where people fail to show up, they ignore notices, did your study show how many cases could have been handled in absentia and were not by the judges?

Ms. EKSTRAND. How many cases were not?

Mr. MAZZOLI. Could have been but were not.

Mr. Blume.

Ms. EKSTRAND. Mr. Blume.

Mr. BLUME. Sure. Actually, the study would be hard to do because the problem was that the aliens who did not appear, the

judges were reluctant to order them deported in absentia because they weren't comfortable——

Mr. MAZZOLI. I am not asking about the comfort level of judges. I am saying that under the 1990 act they could have acted and done it. How many declined to do it, and how many cases were there?

Mr. BLUME. We don't have that information, sir. But will supply it for the record.

[The information follows:]

DATA ON ALIENS WHO FAILED TO APPEAR FOR DEPORTATION OR EXCLUSION HEARINGS
IN FISCAL YEAR 1992

Total deportation and exclusion hearings	110,741
Total aliens who failed to appear	23,010
Aliens ordered deported or excluded in absentia	14,874
Aliens' cases administratively closed without issuing an order to deport or exclude the alien ¹	8,136

¹ According to an EOIR official, aliens' cases may be administratively closed for reasons other than failing to appear; however, the number closed for other than a failure to appear would be an extremely small percentage.

Source: Executive Office for Immigration Review.

Ms. EKSTRAND. In many ways though, it is a moot point since INS doesn't have the resources to go out and find the person.

Mr. MAZZOLI. I understand.

The second point: Once you do it in absentia, then you have got to find them. But when you find them, nowadays they try the whole thing out again. If, in absentia, you make the judgment thereafter it is going to be habeas corpus, they are finished with asylum, they are finished with nonrefoulement. The only thing at that point would be some kind of a habeas action because they forfeited everything else, but they are not forfeiting this because the EOIR isn't acting as they could under the in absentia authority that they have under the 1990 act.

So I may ask you all for some followup on that point. I think that is a very valid reason. Part of this huge backlog could very well be the fact that the Immigration Service has not acted on its authority conveyed by the 1990 act.

The other thing: If I understand correctly, after, an in absentia hearing, then you have got to apprehend the people. Then you say a further problem is, you have got to send them back to the country, and therefore you have got to get permission from the country.

I would like to know how many people are entering from third countries. So far as I know, most of the ones entering JFK are not coming from the point of so-called persecution, so that you wouldn't have the same problem sending them back because they are not going back to the country where they said they were persecuted.

Mr. Blume.

Mr. BLUME. No, I'm sorry. You still have to send them back to a country that will accept them. So if, shall we say, a person is coming from a Third World country through, let's use London.

Mr. MAZZOLI. Yes.

Mr. BLUME. London is not going to take them back. England is not going to take that person back because that is not their citizen.

Mr. MAZZOLI. So they have authority, even though they let that person slip through, and in many cases they were inattentive to

the rules they have, we have set up, they still would have some right of refusal?

Mr. BLUME. They would let the person come into the airport in a transit flight.

Mr. MAZZOLI. Well, maybe that is something the gentleman from New York would deal with in his bill, but it seems to me that where a country has, either through inattention or whatever, allowed someone to board illegally in that country, a third country, not where the person is being persecuted, then I am not sure we should have to get into some kind of big, long paperwork snarl with that country before they take that individual back; they let them through in the first place, sometime, if I understand, after 2 or 3 years in that country. These are not people transiting the country. Some of them are coming after a fairly long stay.

Are you aware of that, Ms. Ekstrand?

Ms. EKSTRAND. Well, if they are in transit in the airport, they are sort of in no-man's-land while they are going through the airport.

Mr. MAZZOLI. But some of these people have been landed in the country from which they come to this country, landed in the sense of having been there for a while either on a visa or maybe sometimes even permanent residence.

Anyway, my time is about to expire. But, again, I really applaud GAO. You did excellent work. Your studies in 1989 and 1992 have helped this committee very much, and we appreciate it.

The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

I am curious about one area that you mentioned that I didn't see in the testimony—and my hearing might not always be perfect—that has to do with the cost to the INS if they were to really detain people. I know it would be high, but I think you gave some approximate figure, or ratio, or percentage, or estimate, or something of that nature, of what it would cost. Could you repeat that, please?

Ms. EKSTRAND. Yes, I certainly could.

We did a little calculation that is not in the testimony, because we just figured out the possibility of doing it yesterday afternoon. But basically there were 70,000 aliens caught being smuggled into the country in 1972, and we took the average number of days that excludable aliens were held during 1992, multiplied that by the cost per day of detaining an alien, an excludable alien, and the figure comes out to just under \$200 million solely for detaining 70,000 smuggled aliens for 1992.

Mr. MCCOLLUM. That is a big number. Did you give that in terms of a percentage of what INS' budget is?

Ms. EKSTRAND. It is about one-fifth of INS' total budget. Clearly, the numbers show that detention is not going to be the total solution.

Mr. MCCOLLUM. Right. But I was thinking, too, that the 70,000 caught being smuggled doesn't represent all that might be detained.

Ms. EKSTRAND. Oh, not at all.

Mr. MCCOLLUM. We had 35,000 come through New York's airport. Those weren't all smuggled.

Ms. EKSTRAND. Oh, no, no. These are solely for smuggled aliens. The figure would be astronomically larger if it included all detainable aliens—much, much larger.

Mr. MCCOLLUM. Right. I was thinking of the asylum claimants. The figure given to us in New York City alone last year, through that one airport, was quite a sizable number, and then I think nationwide it was 35,000 that had gone through the airports that had been identified as having no documents or fraudulent documents who then claimed political asylum, and that would not be smuggled people. They may have been involved in some kind of ring to pay to learn how to do this, but they wouldn't even have been counted.

Ms. EKSTRAND. No.

Mr. MCCOLLUM. That would push it over 100,000 right there.

Ms. EKSTRAND. Oh, easily.

Mr. MCCOLLUM. Well, thank you. That is a very, very important statistic so that we have some reality check with our colleagues who sometimes say, "Let's build some more prisons," or, "Let's just figure out a way to detain these people." Even if we went out to the closed military bases and tried to do this, operating overhead has got to be paid for, and that is going to eat up all the INS budget that is involved in this process.

You have done some very fine work in analyzing this right now, and I think that basically what you are saying to us is that while there may be certain things we are doing now, if we don't get the right thing to stop the flow at the source—that is, keep them from getting here in the first place or turn them right back around again—there is no way to manage this problem, and I think we perceive that already, but we certainly are grateful to you for coming up with that.

I am not going to ask more questions simply because we have so many other witnesses today. Thank you.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from New York.

Mr. SCHUMER. Thank you very much, and I first am glad that the GAO panel looked favorably on preinspection. As you know, the administration task force didn't, although we were told that was State Department driven and dominated and they have been opposed to this for a long time basically, in my judgment, on the basis of, "Get it off my back; we'll put it on somebody else's back." You know, it is a hassle for them to negotiate the agreements, et cetera. But I appreciate your good work.

I have a couple of questions just on the other areas. In your statement you don't discuss the asylum process in detail. Would you agree that the procedures have become too protracted, too many extra levels of review, and that some of them could be limited? Is GAO allowed to make such value judgments?

Ms. EKSTRAND. I certainly would have to say that we probably agree with the notion that they are very protected. The asylum hearing process can take years and years, and there are certainly a lot of steps along the way. A lot of that time is waiting time between hearings, and that is because there are clearly so few hearing officers.

Mr. SCHUMER. Maybe I should ask some of the Government witnesses, but why do you think it is so protracted, given the fact that

a lot of the steps in there are not constitutionally or even statutorily required? Am I asking accountants questions I should ask lawyers?

Mr. BLUME. I think I am the only accountant here.

Mr. SCHUMER. Oh, OK. Good.

Ms. EKSTRAND. Maybe you would like to answer.

Mr. BLUME. They have a lot of appeal rights, sir—that is the problem—so that they can use a lot of different avenues. In our report that we did for this committee on the problems, we laid out all the kinds of rights they have to appeal decisions at various parts—

Mr. SCHUMER. Yes, but how did all these rights get obtained? I mean, is it in part because there were people—obviously the lawyers and others—pushing for more and more steps and nobody pushing back on the other side? There is a cost to having these as well as a benefit. The benefit is, you get a little fairer and you make sure that somebody who deserves asylum gets it. The cost, of course, is that it just stretches the process out so much that it has become something of a joke in certain parts.

Mr. BLUME. If you go back to the 1952 act, that is basically what you are operating under, and that act had a very humanitarian approach, a very concerned approach, and I think what you are now confronted with is the problem in the 1990's and the act just does not mesh with it. You can change it.

Mr. SCHUMER. Does it require statutory change?

Mr. BLUME. Yes, that it would.

Mr. SCHUMER. The three appeals are statutory?

Mr. BLUME. Your call, as this committee, as a legislative committee, can make those kinds of changes. The due process they are entitled to, but you say what rights they have.

Mr. SCHUMER. OK. I am told some are administrative, some are statutory.

Mr. BLUME. That is true.

Mr. SCHUMER. OK. The second question I have is: You have made reference to the 1989 study of criminal aliens which found that the INS actually deports very few of the people who are here illegally and then commit crimes.

Last week I was visited by the Los Angeles sheriff—my staff was—and he operates the jail there. He said when he releases criminal aliens who have completed their prison sentence, in more than 90 percent of the cases the INS hasn't even started deportation proceedings, so they are then just back out on the streets. These are immigrants who commit a crime, serve time in jail, which the States, not the Feds, are paying for. That is a different issue that I am working on. But my question is, does the Los Angeles figure seem out of line with the figures in the rest of the country?

Mr. BLUME. I don't know if they are out of line or not. The first question I would have to ask the Los Angeles police chief would be—

Mr. SCHUMER. Sheriff.

Mr. BLUME. Sheriff—how he knows what the status of that individual is and, in fact, an illegal alien. I mean that is something that INS does a very good job of determining.

Mr. SCHUMER. They do a very good job, you are saying?

Mr. BLUME. They can determine that.

The question we have found—and we did some work on the institutional hearing program which is designed specifically to address the question you are talking about—INS does not have the resources, nor does the Executive Office for Immigration Review have enough judges to actually start and hold hearings while the aliens are in prison.

Mr. SCHUMER. Which would make eminent sense.

Mr. BLUME. Which means as soon as the alien completed his or her sentence, they would be out of the country; the ticket and documentation would already be there.

Mr. SCHUMER. Let me ask you something just off the top of my head, and probably on both sides of this issue would be upset with this proposal, so I am not sure it would work, and I am not sure it is the right thing to do. But let's say someone was assigned to a 5-year prison sentence and they said, "We'll make you serve 3 provided you waive all deportation rights, and the minute you finish the 3 you go back to the country you were from." That might be unconstitutional; I am not sure. What do you think?

Mr. BLUME. It is doable, and, in fact, in our work we did for this committee on criminal aliens we asked prosecutors that, and they had one concern. Now, it is a dated report, but I would point out that the only penalty for that individual committing the crime would be removal from the country, and the question is, is that sending a signal that you could come to the United States, commit a crime—

Mr. SCHUMER. But I am not proposing that. I am proposing a reduction in sentence, once you are either incarcerated or before incarceration begins.

Mr. BLUME. You would have to change the law, but that would be acceptable if the alien would agree to depart and the State would say they have completed their sentence; they could leave.

Mr. SCHUMER. OK.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much.

The gentleman from Florida.

Mr. CANADY. I don't have any questions at this point, thank you.

Mr. MAZZOLI. Thank you very much.

The gentleman from Illinois.

Mr. SANGMEISTER. I would like to not be repetitive, but I want to follow up a little bit on the gentleman from Florida's comments about detention itself. You know, in the Congress we are faced here every day with a matter of priorities, how much money we are going to spend, where we are going to spend it.

I can remember back when I was in the Illinois Senate the Governor appointed me to a task force on prison overcrowding. For 6 months we studied it. We came up with early release, parole, probation, halfway houses—you name it. We brought it back to the Illinois General Assembly, and what was the result? Build more prisons, and we did exactly that. And the people in the State of Illinois accepted it, their tax dollars going for that very expensive—maybe \$20,000 to \$25,000 a person per year to incarcerate that person. But that is what they wanted.

I am not so sure from what I am hearing from the American people, particularly in my district, their views are different as far as immigration is concerned. They are wondering why we just don't enforce the laws that we have.

Now I understand, detention means housing, food, it means a lot more hearing officers, a lot more attorneys involved, it is going to be an expensive proposition, but I am not so sure that the American people, despite the budgetary problems that we have here, do not at the present time think that this is a very high priority item and are willing to see the Congress spend a pretty good dollar to do this.

Now I understand from your testimony that the best estimate that you could come up with was \$200 million, but then if we had a full detention process, holding everybody, having the hearings, the cost of deportation and everything that is involved, I believe the testimony was that it would be astronomical. Is that the best we can get? Can somebody get a little better than "astronomical?" We can't even put a figure on it?

Ms. EKSTRAND. Within a 2-year period there were about 485,000 illegal aliens that INS, in one way or another, had their hands on that could have been detained.

Mr. SCHUMER. How many?

Ms. EKSTRAND. Somewhere around 489,000 that, one way or another, INS could have detained. If 70,000 smuggled aliens would cost \$200 million, the math for the 489,000 is far more than I can do in my head, but it is a very high number. I presented that number solely to show that, although detention has to be a piece of the solution, we have to think of this as a whole system—

Mr. SANGMEISTER. I couldn't agree with you more.

Ms. EKSTRAND [continuing]. And figure out ways to attack all the different parts of this as opposed to having one solution and thinking that is going to work.

Mr. SANGMEISTER. You know, a good portion of that cost could be saved by using some of the military bases we are closing. Of course, I don't think anybody has made an analysis of that, but there have got to be some great facilities out there to do a bit of the housing and feeding that would be necessary for detention. But, you know, even if it reaches a billion dollars—and that certainly is an awful lot of money—under the circumstances and considering what we are faced with in this country, and I think we need to face up to that, I really think the American people would be willing to spend that kind of money.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

On this question of detention—and quite a bit of your prepared statement deals with this issue, the inadequacy of it and the fact that we go from 6,000 to 8,000 beds over the period of the next few years—one thing that has been very troubling to my colleagues and myself, particularly as a New Yorker recently, is the decisions on base closings. I wonder if it has been considered at all whether or not some arrangement could be made to transfer those military bases that are no longer to be used for military purposes to the De-

partment of Justice to maintain housing for aliens who are detained pending adjudication of their claim or whatever.

Mr. BLUME. We have, sir, done some work on that issue, not with respect with aliens, and I would be happy to provide the report to the committee. I don't have the specifics on that report, but we did address that issue of using possibly, as you said, abandoned or no longer used military installations. We can provide that, I think, for the record of the committee.

Mr. FISH. Good.

Mr. BLUME. I don't have any information at this time, though.

Mr. MAZZOLI. If you would be so kind to do that, Mr. Blume, we would appreciate it.

Mr. BLUME. Yes. No problem.

"Prison Expansion: Program to Identify DOD Property for Prison Use Could Be Improved" (GAO/GGD-90-110, Sept. 1990).

Mr. FISH. In your testimony, you refer to the President's plan to combat alien smuggling, and you mention, "To interdict and redirect smuggling ships in transit, the Coast Guard will board suspected ships involved in smuggling aliens and, if practical, will escort the aliens to the nation of the ship's registry or to the nearest non-U.S. port." I take it you are talking about Panama, Honduras, or Liberia, the countries that are registering these vessels that are being used in this slave trade. Is that correct?

Ms. EKSTRAND. Yes, sir, or going to a country that would accept the passengers.

Mr. FISH. How likely is that latter possibility?

Ms. EKSTRAND. It is hard for me to say. I don't know how often it has been used.

Mr. FISH. To your knowledge, have we negotiated any agreements with the countries of the ships' registry to see that they do—well, a lot of things—stop registering these vessels used in smuggling, but will take the ship and the cargo back?

Ms. EKSTRAND. To my knowledge, at this time no discussions have been held, but INS may know better.

Mr. FISH. Well, just as a matter of interest, if this doesn't occur—and I think it is very unlikely that it would occur in the near term—and we are told we may have as many as 20 or 30 vessels on the high seas coming toward the United States right now, what do you do once the Coast Guard has stopped a vessel? There they are, they interdict, and they are on the high seas, and they have got permission from the country of registry, I presume, to do the interdicting, and so what is the next step? What do they do with the aliens, the smuggled aliens aboard the ship?

Ms. EKSTRAND. Well, it is not an easy process. If they are outside our territorial waters, they can ensure that they do not come inside the territorial waters, but if the aliens land in any way, then they would have to process them in terms of exclusion.

Mr. FISH. I am assuming that they are interdicted, they are not landing, because I think your topic sentence here—I have been in this business quite a while with the chairman of this subcommittee, and I have never seen it put quite so succinctly as you have in this paper, and I will find that quote in 1 minute—yes. "The key to controlling illegal entry of aliens is to prevent them from their initial arrival."

Isn't that beautiful? That is all you have to do, Mr. Chairman.

Mr. MAZZOLI. Well, it is like——

Ms. EKSTRAND. Easier for me to say.

Mr. FISH. There has been some talk, and there was a newspaper article, and it referred to a study by a professor, I believe, at Rice University—are you familiar with that?—that claimed that the net cost to the United States from legal and illegal immigrants in this country is \$45 billion a year. Have you seen that study?

Ms. EKSTRAND. I haven't seen the study, but I have seen several others that have tried to deal with the cost of illegal immigration. It is something very, very difficult to measure, and Representative McCollum and Representative Smith of this committee have asked GAO to look at the costs of illegal immigration.

Mr. FISH. If you will look at that letter again, there is a third signature there besides Mr. Smith and Mr. McCollum, mine.

Ms. EKSTRAND. Excuse me.

Mr. FISH. The study is by Prof. Donald Huddle—H-U-D-D-L-E—of Rice University, which maintains that immigrants, legal and illegal across the United States, cost \$45 billion a year. I find that difficult to believe and would really appreciate the views of the GAO on the methodology used, whether the figures are netted out, whether he is just talking about the taxes paid by legal immigrants and not considering the employment opportunities by industrious people in our midst.

This letter to the Comptroller General dated June 17, I understand, will be followed up by a meeting this afternoon of staff, and I hope you will agree to pursuing that.

Mr. MAZZOLI. The gentleman's time, I am sorry to say, has expired.

Mr. FISH. Thank you, Mr. Chairman.

Mr. MAZZOLI. I appreciate it.

The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman, and I too would be very interested in having GAO examine that particular study. I think Mr. Fish raises some good questions there, especially if this report talks only about the costs and not the benefits or the incomes that are derived and paid by immigrants, both legal and those who are here undocumented.

I don't have questions about substance in the testimony, I think it was good testimony, but I do have some questions more about some of the points that are raised in the testimony, if I can go through those with you. I think it is important we make sure we talk with clarity.

On page 3 of your testimony, you mention that the INS apprehended about 1.2 million aliens who tried to enter the country through the different ports of entry. Now, apprehended 1.2 million aliens, or there were 1.2 million apprehensions, because some people, obviously, through the Mexican border might cross more than once and be apprehended more than once.

Ms. EKSTRAND. That is correct. These are actually apprehensions.

Mr. BECERRA. OK. So it is apprehensions. So we are not talking about 1.2 million individuals. We are talking about apprehensions, which could include from 1 to 1.2 million individuals.

Ms. EKSTRAND. That is correct.

Mr. BECERRA. OK.

Ms. EKSTRAND. It is highly likely that many people crossed many times.

Mr. BECERRA. OK. And that would clarify the confusion I had with page 4, the statistic that the Bureau of Census estimated that about 3.3 million aliens were in the country without documentation in 1990. Obviously, if you were using the estimate of 1.2 million aliens who were apprehended, and INS estimates that for every alien apprehended about 2 aliens successfully enter, 2.4 million aliens would enter every year, and, obviously, between 1990 and 1993 we would have over 7 million undocumented aliens.

Ms. EKSTRAND. Not quite as bad as that.

Mr. BECERRA. OK. In the June 1992 report by GAO, you mention—and I am looking at page 10 of the report—that in fiscal year 1990—I am looking at the fourth or fifth paragraph—INS apprehended at borders and within the country 1.17 million aliens, and of those 1.02 million left the country voluntarily. So about 9 out of every 10 aliens that come into the country without documentation leave voluntarily.

Ms. EKSTRAND. Yes, sir. And most of them are Mexican aliens who come across the border and are apprehended and voluntarily leave.

Mr. BECERRA. So we are looking at the Southwest border in many of these instances.

Ms. EKSTRAND. Because the numbers in the Southwest border are so much greater than any other point of entry they tend to dominate the statistics.

Mr. BECERRA. Right. And approximately 9 out of every 10 of those who were apprehended leave the country voluntarily; correct? So that means that there is no need for detention facilities for them once they have decided to leave or to go through the process of asylum or anything else?

Ms. EKSTRAND. It is true for Mexicans at the Mexican border both because they will agree to go back across the border and because there is no transportation cost involved in returning them. For Chinese illegal aliens or for aliens from countries that do not border the United States, the problem is much more difficult.

Mr. BECERRA. How are they normally handled, those who are not immigrants from a country such as Mexico that is right near our border?

Ms. EKSTRAND. Well, they have to have transportation back to their home country, and they also have to have agreement from the home country to take them back.

Mr. BLUME. And the hearing.

Ms. EKSTRAND. Oh. Excuse me. And they do have to have a hearing.

Mr. BECERRA. Do have to have a hearing—even if they voluntarily agree to leave the country?

Ms. EKSTRAND. They have to have a hearing to make that known.

Mr. BECERRA. I see. They can't at the point of apprehension when there is no documentation that the person can provide say, "Well, I will voluntarily return to my country, or a country?"

Ms. EKSTRAND. And disappear.

Mr. BECERRA. And disappear. Whatever the case is. But do some of them say, "You caught me redhanded, I will go back?"

Ms. EKSTRAND. We know clearly there are people that do arrive that have a round-trip ticket from somewhere and it is decided that they are excludable at JFK or another airport or another port of entry and they are literally turned back, right. They are.

Mr. BECERRA. But it is clear just from the fact that it is easy to cross the Mexican-American border that voluntary departure is something that we would see more from immigrants coming over from the Mexican border?

Ms. EKSTRAND. Absolutely.

Mr. BECERRA. Mr. Schumer brought up a point in reference to Los Angeles County and the criminal aliens who were released. Now there was no distinction made between criminal aliens who were here without documentation or those who happen to be legal aliens with documentation. In either case both are deportable because they violated laws in this country and therefore the United States has a right to go ahead and deport them; correct?

Ms. EKSTRAND. Yes, sir.

Mr. BECERRA. OK. So at that point we are mixing again two different classes of people, those that have documents and those that do not have documents.

Ms. EKSTRAND. That is correct.

Mr. BECERRA. Is it important when you give your statistics to state who is here with documentation and has the right to remain here; and who does not have documentation and does not have the right to remain here?

Ms. EKSTRAND. I am not quite sure I understand the question.

Mr. BECERRA. The concern I have is that we often talk about the problem of immigration. There is a problem with immigration because we have folks who are coming in beyond what we legally allow to come in, and we come up with statistics that talk about the number of people who are coming in both legally and without documentation.

If we want to really get a clear understanding of how big the problem is, and the problem is those who come in without documentation, it would be essential then to be able to distinguish between legal immigration and illegal immigration. So when we talk about deportable aliens, we are talking not only about undocumented aliens, we are talking about legal aliens as well?

Ms. EKSTRAND. Well, remember many, many people come in legally but then overstay visas or in some other way remain in the country too long and become illegal. So the situation is, perhaps, even more confusing.

Mr. MAZZOLI. The gentleman's time has expired. I am sorry.

I think, if I am not mistaken, Mr. Schumer's point was, which we want to explore later, is that valuable time is being lost by the Immigration Service in not beginning the deportation process whether the alien jailed is legally here or illegally here. I think the point was just that looking at an effort to try to catch up on time here.

Mr. SCHUMER. If the gentleman would yield? I mean let's make it clear. We are not talking about deporting people who are legally

here. We are talking about—the distinction I believe Mr. Becerra was making was people who came here legally and then overstayed their visas and so are here illegally or people who never had documents and are here illegally. But in both cases the person is deportable when he or she is released from jail.

Mr. BECERRA. If the gentleman will yield for a second. Actually there are cases where you have people who are here as, perhaps, lawful permanent residents who, if they violate the laws, violate the terms of their permission to stay in this country.

Mr. MAZZOLI. Well, I think, if I am not mistaken, permanent residents can be deported, can they not?

Mr. SCHUMER. Right.

Mr. MAZZOLI. So, in other words, you know, if a person in jail is a permanent resident legally in this United States there could be a process started while that person is incarcerated for determining should that person be deported or not. I think that was the issue that was raised.

Mr. SCHUMER. Right.

Mr. MAZZOLI. The gentleman's time has expired.

Mr. BECERRA. Mr. Chairman, if we could get that information. Perhaps your staff, Mr. Schumer, can provide that. I would like to see that as well.

Mr. MAZZOLI. Exactly. I think it is very important we get that. Very good.

We thank you very much.

Mr. MAZZOLI. Our next panel, our first Federal panel is Ms. Chris Sale, the Acting Commissioner of the Immigration Service; Mr. Laurence Urgenson, the Acting Deputy Assistant Attorney General, Criminal Division, Department of Justice; and Mr. Jim Moody, the Section Chief of the Organized Crime Bureau, the Federal Bureau of Investigation.

We are happy to have you. We appreciate your taking the time. While the hearing is going a bit longer than we, perhaps, had expected, it is a very important subject. I believe all of you have been in the room from the time we began, so you got some idea of what the committee is wrestling with, everything from more detention facilities as one aspect of the problem to more hearing officers to the question of can we do something better than what we are doing given not a single change in the law and not a single additional Federal dollar or not a single additional human being. So we are trying our best to see our way through it.

But anyway, having said that, Ms. Sale, we welcome you, and would be very happy to hear your testimony. Incidentally, all of your statements will be made a part of the record.

STATEMENT OF CHRIS SALE, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Ms. SALE. Thank you, Mr. Chairman. I do have a longer statement but I will summarize it, if you and the other members of the subcommittee and Mr. Fish will permit me.

The issue of alien smuggling is one that INS, obviously, continues to struggle with and that this administration is very focused on, given the circumstances that we all confront. In our opinion, the United States is facing a serious immigration problem stem-

ming from the economic aspirations of a substantial number of individuals throughout the world and unscrupulous smugglers who would exploit those individuals. This has been recognized by President Clinton who proposed an interagency action plan to combat criminal organized alien smuggling, as distinct from some other conversations earlier about sort of the broader aspects of immigration control, and organized crime syndicates who are responsible for that traffic.

The President's initiative calls for measures to deal with alien smuggling operations at the source, in transit and when they reach the United States. The Justice Department's role, and particularly INS' role, is very broad. As a part of this initiative the Department of Justice is proposing legislation to deal with enhanced criminal authorities to recognize the problem of organized crime that would expand prosecutorial and investigative authorities. We would propose to increase penalties for smugglers. We would propose to apply the Racketeering Influenced and Corrupt Organizations Act, the RICO statutes, to smuggling offenses which are not now considered a predicate crime in that context; and to expand asset seizure authority.

In addition, as the Attorney General described to some of you recently, the administration is proposing to present an initiative which would propose for an expedited exclusion proceeding at ports of entry, and we are currently reviewing measures to improve the asylum processing and policies under which we perform the affirmative asylum process.

We are confident that we can respond effectively to this challenge while honoring our historical and legal commitment to provide protection for those who legitimately fear persecution upon return to their country of origin.

Alien smugglers comprise an international criminal network which includes recruiters, suppliers, transporters, guides, fraudulent document vendors, and safe house operators. Smugglers and their associated criminal gangs subject their human cargo to deplorable conditions while en route to the United States and then deliver them to a life of indentured servitude, torture, fear and extortion.

Smugglers also exploit the laws of the United States and international maritime law to evade detection. Among the many crimes associated with alien smuggling are kidnapping, rape, murder, holding smuggled aliens as hostages for ransom, coerced prostitution, narcotics and firearms trafficking. Extortion and public corruption we find are also integrally related.

Smuggling cartels are capable of moving hundreds of people per month worldwide. They may transit illegal aliens through several countries prior to arriving in the United States. The smuggled aliens, especially those from China, obligate themselves to pay smuggling fees from \$25,000 to \$30,000 apiece while enduring hardship and risking their lives during a perilous journey.

Alien smuggling also has become an important source of income for organized crime syndicates. Chinese alien smuggling alone has been estimated to generate in excess of \$3 billion a year in profits which are then redirected for other criminal activities.

Since September 1991 approximately 2,300 illegal Chinese aliens have been intercepted while they were being smuggled on ocean-going vessels. The most recent example, the *Golden Venture*, which ran aground in New York City, held 285 passengers. Some attempted to swim ashore resulting in at least 10 drownings. Only days before that incident three boats offloaded nearly 400 Chinese aliens near San Francisco, CA. In February 1992, a vessel docked in Honolulu with 93 Chinese aliens aboard. There have also been instances of boats in San Francisco, San Diego, North Carolina, and we are aware of numerous boats landing outside the United States, principally in Latin American and Central American countries.

This increase in Chinese smuggling by ship, which offers high profits at low cost to smugglers, is particularly disturbing. Appalling sanitary conditions on the vessels, the presence of contagious diseases among the passengers, and allegations of violence against the passengers raise very serious humanitarian concerns.

In addition to generating illicit proceeds, criminal organizations use alien smuggling to bring in their associates and others who might not otherwise qualify for legal entry into the United States. These aliens may be brought here to work for criminal groups involving narcotics trafficking, racketeering, vice and extortion.

More importantly, smuggled aliens without previous criminal orientation represent a labor pool for the criminal organizations when they are unable to repay their smuggling fees and become vulnerable to coercion, which may also occur when aliens are extorted for more than they agreed upon for smuggling fees.

Smuggled Chinese aliens in particular constitute an underground community subject to control of criminal groups. This population is a group whose background is unknown, whom we will never be able to accurately identify. In addition, alien smuggling and immigration fraud are perpetrated by organized crime groups with members representing numerous other nationalities. Many of these groups are involved in drug trafficking.

The INS has initiated operations to address the issue of large-scale alien smuggling. Some of these initiatives include the creation of a Chinese boat smuggling task force, which has investigated the 14 boats we have seen come to the United States, seizing 13 of the boats. Prosecutive actions have resulted in the conviction of 85 individuals. We have additional indictments pending.

Finally, the interdiction efforts and cooperation with foreign governments which have resulted in the repatriation of over 1,000 smuggled aliens. Ones that we have been principally involved in included a boat at the Marshall Islands, one in Honduras and one in Mexico. There are additional repatriations which are being handled directly by countries outside the United States who have acknowledged that this is a global problem.

We recognize that detention and expedited procedures at ports of entry can serve as powerful deterrents to alien smuggling. However, these measures should be supplemented by enforcement tools. In that regard, the Department and INS will be proposing to provide powerful tools for that purpose.

I thank you for the opportunity to be here today, and I will welcome any questions.

Mr. MAZZOLI. Thank you, Ms. Sale. I appreciate it very much.
 [The prepared statement of Ms. Sale follows:]

PREPARED STATEMENT OF CHRIS SALE, ACTING COMMISSIONER,
 IMMIGRATION AND NATURALIZATION SERVICE

ALIEN SMOGGING: DOMESTIC IMPACT AND GLOBAL PERSPECTIVES

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today and want to thank you for the opportunity to discuss the very important issue of alien smuggling. The INS appreciates the continuing support that Congress and this Subcommittee have given to our immigration enforcement efforts.

The United States is facing a serious immigration problem stemming from the economic aspirations of tens of thousands of individuals throughout the world, and unsorupulous smugglers who would exploit these individuals. This has been recognized by President Clinton, who proposed an interagency action plan to combat alien smuggling and the organized crime syndicates responsible for this traffic. President Clinton's initiative calls for measures to deal with alien smuggling operations at the source, in transit and when they reach the U.S. The Justice Department's role, and particularly INS's role in this initiative are broad.

As part of this initiative, the Administration is proposing legislation to 1) expand prosecutorial and investigative authorities, 2) increase penalties for smugglers, 3) apply the Racketeering Influenced and Corrupt Organizations Act to smuggling offenses, and 4) expand asset seizure authority. In addition, we are proposing legislation that would provide for expedited

exclusion authority at ports-of-entry, and we are reviewing measures to improve current asylum processes and policies. We are confident that we can respond effectively to this challenge while honoring our historical and legal commitment to provide protection for those who legitimately fear persecution upon return to their country of origin.

How Alien Smuggling Operations Work

Alien smugglers comprise an international criminal network including recruiters, suppliers, transporters and guides, fraudulent document vendors, and safehouse operators. Smugglers and their associated criminal gangs subject their human cargo to deplorable conditions while enroute to the U.S., and deliver them into a life of indentured servitude, torture, fear, and extortion. Smugglers also exploit the laws of the United States and international maritime law to evade detection. Among the many crimes associated with alien smuggling are: kidnapping, rape, murder, holding smuggled aliens as hostages for ransom, coerced prostitution, narcotics and firearms trafficking, extortion, and public corruption.

Smuggling cartels are capable of moving hundreds of people per month worldwide. They may transport illegal aliens through several countries prior to arriving in the United States. The smuggled aliens, especially those from China, obligate themselves to pay smuggling fees from \$25,000 to \$30,000 each, while enduring

hardship and risking their lives during an often perilous journey.

Alien smuggling also has become an important source of income for organized crime syndicates. Chinese alien smuggling alone has been estimated to generate in excess of \$3 billion a year in profits that are then re-directed into other criminal activities.

Alien smuggling syndicates use a variety of methods to transport their human cargo. In addition to smuggling aliens on ships, organizers arrange for the purchase of tickets and the procurement of fraudulent documents to permit boarding on commercial flights. These documents are frequently destroyed enroute, or are collected by smuggling escorts for recycling and use by other smugglees prior to arrival in the United States.

Smugglers travel on circuitous routes to evade detection, using many transit points such as Thailand, Hong Kong, Singapore, Holland, Belize, Mexico and the Dominican Republic. As diplomatic pressure is applied and law enforcement efforts target suspected routes smugglers establish new routings. Incidents of Chinese alien smuggling have been reported in at least 70 countries and new smuggling routes are uncovered continually.

Aliens smuggled on ships are often transferred to small craft in international waters for transport from the "mother ship" to the

mainland of the U.S. This allows the smugglers to circumvent laws regulating vessels within territorial waters. Investigations have revealed that these smuggling operations are carried out by organized crime members and/or associates.

There are dire humanitarian implications, including loss of life, in many alien smuggling ventures. The aliens are often subjected to brutal and life threatening conditions.

Alien Smuggling from the People's Republic of China

Since September 1991, approximately 2300 illegal Chinese aliens have been intercepted while they were being smuggled on ocean-going vessels. Most recently, the M/V Golden Venture ran aground near New York City, and hundreds of passengers attempted to swim to shore, resulting in at least 10 drownings. Only days before this incident, three boats offloaded nearly 400 Chinese aliens near San Francisco, California.

In February 1992, a vessel docked at Aloha Tower in Honolulu, Hawaii and unloaded 93 Chinese aliens. Since September 1991, the Coast Guard has intercepted fourteen vessels at Los Angeles, San Francisco, Honolulu, San Diego, New York City, and Morehead City, North Carolina. The INS has identified twelve other vessels destined for the U.S., which actually landed in foreign ports.

This increase in Chinese alien smuggling by ship -- which offers high profits at low costs to the smugglers -- is particularly disturbing. First, the appalling sanitary conditions on these vessels, the presence of contagious diseases (such as tuberculosis, measles, and hepatitis) among the passengers, allegations of violence (including beatings, rape, and murder), and passenger deaths raise humanitarian concerns.

Chinese smugglers intersperse "enforcers" with smuggled aliens to maintain a climate of fear and intimidation by threats and assaults. The intimidation often continues long after the aliens have arrived in the U.S. to ensure collection of the smuggling fees. INS agents discovered safehouses in Brooklyn and Queens, New York, and Jersey City, New Jersey, where smuggled aliens were held captive and beaten for non-payment of smuggling fees. Firearms were also found in these warehouses. Family members in the U.S. and China have also been threatened by these gangs when the aliens are unable to pay the smuggling fees.

Global Trends in Alien Smuggling

Members of many nationalities are victims and perpetrators of criminal alien smuggling. As you know, we have traditionally focused our resources on the southern border of the U.S. to interdict, apprehend, and deter the illegal smuggling of Mexicans and other nationalities into the U.S. Increased travel through

Eastern Europe has fueled alien smuggling traffic from, and through, that region. Additionally, aliens have been smuggled from the Caribbean and Latin America, including Jamaica, the Dominican Republic, and Colombia.

Alien smuggling from the Indian sub-continent has also increased in the past five years. Primary factors contributing to this phenomenon vary from political and religious strife to the lack of economic opportunities for many of the inhabitants of the entire region. It should also be noted that for many, the prospect of legal immigration remains remote because of the lack of family members in the United States, or simply long waits due to over-subscribed immigrant visa categories.

Alien Smuggling and Criminal Enterprises

In addition to generating substantial illicit proceeds, criminal organizations use alien smuggling to bring in their associates and others who might not otherwise qualify for legal entry into the U.S. These aliens may be brought here to work for criminal groups involved in narcotics trafficking, racketeering, vice, and extortion. Moreover, smuggled aliens without a previous criminal orientation represent a labor pool for criminal organizations when these aliens are unable to repay their smuggling fees and become vulnerable to coercion, which can also occur when aliens are extorted for more than agreed-upon smuggling fees.

Smuggled Chinese aliens in particular constitute an underground community subject to the control of Asian criminal groups. This population is a group whose backgrounds are unknown, and which we will never be able to accurately identify. In addition, alien smuggling and immigration fraud are perpetuated by organized crime groups with members representing numerous other nationalities. Many of these groups are also involved in drug trafficking.

INS Initiatives and Operations

The INS has initiated operations to address the issue of large-scale alien smuggling and related gang activity. Some of these initiatives include the creation of the INS Chinese Boat Smuggling Task Force which has investigated over 14 boat smuggling incidents, and seized at least 13 boats. Prosecutive actions have resulted in the conviction of 85 individuals with additional indictments pending. Finally, interdiction efforts and/or cooperation with foreign governments have resulted in the repatriation of over 850 smuggled aliens from vessels that landed in the Republic of the Marshall Islands, Honduras, and Mexico.

The INS Investigations Division aggressively pursues alien smuggling and related criminal activity such as immigration fraud and violent gang activity. The Division is charged with dismantling major smuggling organizations by identifying, infiltrating, apprehending, and prosecuting persons engaged in the

smuggling and transporting of illegal aliens into the United States. Special agents are deployed at INS district offices, Border Patrol sectors, and strategic air and sea ports.

Investigations have resulted in significant prosecutions of alien smuggling operations relating to all nationalities, and seizures of narcotics and conveyances. Anti-Smuggling units participate in multi-jurisdictional task force operations that have also produced significant results. The Investigations Division of INS also initiated an enforcement effort known as CENTOPS (Central Office Tactical Operation Plan), which has produced several successful prosecutions, overseas deterrence operations, and extraterritorial prosecutions.

One particular operation, known as CENTOP Dragon, was created in 1989 to target Chinese alien smuggling organizations through the development of cases with high potential for successful prosecution and long-term deterrent effect. Over 100 investigations have been initiated, many of which resulted in successful criminal prosecutions and overseas deterrence. These cases have yielded a wealth of information about smuggling operations including routes, modus operandi, trends, and major participants.

The INS Violent Gang Task Force (VGTF) is another initiative consisting of a national coordinator, four regional coordinators.

130 Special Agents in 16 large cities, and 20 Special Agents in 20 smaller cities. Its purpose is to engage in proactive, interagency, multi-jurisdictional law enforcement operations against gangs and gang-related activities. The INS/VGTF is designed to disrupt and, ultimately, dismantle alien gangs through identification, prosecution, and removal of gang members from the United States. Gangs and gang members are targeted for any violation upon which deportation proceedings can be predicated. Thirty percent of these investigations involve alien smuggling charges as well as other violent crime charges.

We recognize that detention and expedited procedures at ports of entry can serve as powerful deterrents to alien smuggling and illegal immigration. However, these measures should be supplemented by a range of enforcement tools. In this regard, the Administration will be proposing legislation to provide more powerful investigative and prosecutorial weapons to combat sophisticated international criminal organizations. Together, these proposals will create a credible enforcement deterrent to this highly lucrative and rapidly growing criminal enterprise.

I appreciate the opportunity to be here today to discuss alien smuggling and related crimes, and would be happy to answer any questions you may have.

Mr. MAZZOLI. Mr. Urgenson.

STATEMENT OF LAURENCE A. URGENSON, ACTING DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. URGENSON. Mr. Chairman, members of the subcommittee, I am pleased to be here today to receive your questions and suggestions as we work together in formulating an approach to the increasing problem of organized alien smuggling. I am here because I supervise the General Litigation and Legal Advice Section which oversees the enforcement effort of criminal violations of the immigration laws.

I do not have an opening statement. I am relying upon my colleagues.

Thank you.

Mr. MAZZOLI. Thank you very much, sir. We appreciate it.

Mr. Moody, of the FBI.

STATEMENT OF JIM E. MOODY, SECTION CHIEF, ORGANIZED CRIME, FEDERAL BUREAU OF INVESTIGATION

Mr. MOODY. Mr. Chairman, and members of the panel, thank you very much. I will give a shortened version of my speech. I want to thank you on behalf of Director Sessions for allowing me to be here this morning.

Let me state at the outset that the majority of the Chinese community are law-abiding citizens, even those who come here illegally, overall, once they get here. However, there has been a growing pattern of Asian criminal activity throughout the United States. As a result, in 1987, the FBI designated Asian organized crime as a priority program within our organized crime national strategy. Subsequently, the Department of Justice did so.

The main focus of our investigative effort in this area has been, and will continue to be, to investigate those criminal organizations, identified as significant threats to American society, and which have a national or international nexus, that violate the predicate offenses identified in the racketeering influenced and corrupt organizations statute. The smuggling of illegal aliens from the People's Republic of China and other countries into the United States is often found as a part of FBI investigations of organized criminal enterprises.

We have identified the exploitation of preexisting infrastructure of United States based organized crime groups to facilitate the smuggling of illegal Chinese aliens into the United States. Asian organized crime members have established themselves as the point of contact for those desirous of sponsoring family members, friends or cheap labor illegally coming into the United States.

The criminal groups are oftentimes responsible to ensure any indentured servitude arrangements or they take the opportunity to further extort the sponsors of the illegal aliens for additional money, and often they will utilize these individuals as recruits into the organized crime activity.

When illegal alien smuggling activity is identified as part of the criminal activity of a criminal enterprise, the FBI's policy is to coordinate and share this information with the Immigration and Nat-

uralization Service. We have a number of investigations that are ongoing, and most of them I cannot discuss today.

But one case that I can discuss at this time is an FBI/New York City Police Department investigation involving the Green Dragons. This Chinese criminal enterprise was involved in a myriad of criminal activity. On October 2, 1992, eight members of this group received life imprisonment sentences without parole as a result of their convictions under the RICO statute.

Although alien smuggling activity had been implicated in the investigation the dismantling of the organization occurred before any substantive information of their exact involvement in alien smuggling had been developed. However, Wong Kin Fei, also known as Fu Chow Paul, the leader of the Green Dragons, fled to the People's Republic of China prior to his indictment. Wong has been identified by the Immigration and Naturalization Service, and we would agree with it, as one of the most significant alien smugglers operating today. He remains a fugitive as a result of our investigation.

Two other individuals who have been identified as the most significant alien smugglers operating in the People's Republic of China have been the target of FBI RICO investigation. Tse Chiu Chan, also known as Eddie T.C. Chan, has been indicted on RICO charges stemming from an investigation conducted by the Chicago FBI. Guo Liang-qi, also known as Ah Kay—spelled A-H K-A-Y. The man who orchestrated the *Golden Venture* debacle is also being investigated by the FBI along with the New York City Police Department for his role as the leader of the Fu Ching gang.

The FBI strategy with regard to the smuggling of illegal aliens is to focus our resources on the violations of those predicate acts commemorated in the RICO statute which are being committed by the criminal enterprise. In our experience, the only way to stop organized crime is to completely destroy the criminal enterprise. This is our strategy. Moreover, should the administration's proposal to add alien smuggling as a predicate act to RICO be adopted the FBI will utilize this predicate act as part of our investigations.

Although law enforcement, in general, has enjoyed some successes with regard to those Asian criminal organizations that conduct illegal activity, it is obvious that the penalties and sentencing guidelines that govern illegal alien smuggling must be significantly increased.

The administration proposal in this area will also be important. As further indicated in the President's alien smuggling action plan, increased efforts must be made through both the law enforcement and political processes for better coordination with the Government of the People's Republic of China and the other source nations.

Again, I would like to thank you for the opportunity to testify today. I want to reaffirm the FBI's commitment to our organized crime national strategy because it has taken us many years to develop that and we find that it works.

I would be pleased to answer any questions.

Mr. MAZZOLI. Thank you very much, Mr. Moody. I appreciate the testimony. And incidentally, Dave Cole, who is our special agent in charge in Louisville is a good man. He has done some fine work for us.

[The prepared statement of Mr. Moody follows:]

PREPARED STATEMENT OF JIM E. MOODY, SECTION CHIEF, ORGANIZED
CRIME, FEDERAL BUREAU OF INVESTIGATION

CHAIRMAN MAZZOLI AND DISTINGUISHED MEMBERS OF THE COMMITTEE. ON BEHALF OF DIRECTOR SESSIONS AND THE FBI, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR HERE TODAY AS A MEMBER OF THIS DISTINGUISHED PANEL TO DISCUSS THE RECENT, DRAMATIC INCREASE OF ILLEGAL ALIEN SMUGGLING EMANATING FROM THE PEOPLE'S REPUBLIC OF CHINA.

LET ME STATE AT THE OUTSET THAT THE MAJORITY OF THE CHINESE COMMUNITY ARE LAW-ABIDING CITIZENS AND RESIDENTS OF THE UNITED STATES. HOWEVER, THERE HAS BEEN A GROWING PATTERN OF ASIAN CRIMINAL ACTIVITY THROUGHOUT THE UNITED STATES. AS A RESULT, IN 1987, THE FBI DESIGNATED ASIAN ORGANIZED CRIME AS A PRIORITY WITHIN THE ORGANIZED CRIME NATIONAL STRATEGY. AS YOU ARE AWARE, THE DEPARTMENT OF JUSTICE DID THE SAME IN THEIR 1991 NATIONAL STRATEGY. IN ADDRESSING THOSE ASIAN CRIMINAL ORGANIZATIONS WHICH MEET THE CRITERIA AS SET OUT IN THE NATIONAL STRATEGIES, THE FBI EMPLOYS THE ENTERPRISE THEORY OF INVESTIGATION, THE SAME TECHNIQUE SUCCESSFULLY UTILIZED IN THE BUREAU'S EFFORTS AGAINST THE LA COSA NOSTRA AND THE SICILIAN MAFIA. THE MAIN FOCUS OF OUR INVESTIGATIVE EFFORTS HAS BEEN, AND WILL CONTINUE TO BE, TO INVESTIGATE THOSE CRIMINAL ORGANIZATIONS, IDENTIFIED AS SIGNIFICANT THREATS TO AMERICAN SOCIETY, AND WHICH HAVE A NATIONAL OR

INTERNATIONAL NEXUS, THAT VIOLATE THE PREDICATE OFFENSES IDENTIFIED IN THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS STATUTE; BETTER KNOWN AS RICO.

IN KEEPING WITH THE SUBJECT MATTER OF THE DAY, ALTHOUGH NOT CURRENTLY A PREDICATE ACT UNDER RICO, THE SMUGGLING OF ILLEGAL ALIENS FROM THE PEOPLE'S REPUBLIC OF CHINA, AND OTHER COUNTRIES INTO THE UNITED STATES, IS OFTEN FOUND AS PART OF FBI INVESTIGATIONS OF ASIAN CRIMINAL ENTERPRISES. THE ENTREPRENEURIAL OPPORTUNITIES THAT ILLEGAL ALIEN SMUGGLING HAS PRESENTED TO THE ASIAN CRIMINAL ENTERPRISES, HAVE GREATLY ADDED TO THE SIGNIFICANT INCREASE OF THIS ACTIVITY IN RECENT MONTHS. ENTERPRISE INVESTIGATIONS CONDUCTED BY THE FBI, HAVE IDENTIFIED THE EXPLOITATION OF THE PRE-EXISTING INFRASTRUCTURE OF THE UNITED STATES BASED CRIMINAL GROUPS TO FACILITATE THE SMUGGLING OF ILLEGAL CHINESE ALIENS INTO THE UNITED STATES. ASIAN ORGANIZED CRIME MEMBERS, ALREADY KNOWN WITHIN THE ASIAN COMMUNITIES, HAVE ESTABLISHED THEMSELVES AS THE "POINT OF CONTACT" FOR THOSE DESIROUS OF SPONSORING FAMILY MEMBERS, FRIENDS OR CHEAP LABOR ILLEGALLY COMING INTO THE UNITED STATES. IT IS COMMON KNOWLEDGE "ON THE STREET" THAT THE MEMBERS OF THESE CRIMINAL ORGANIZATIONS HAVE THE WHEREWITHAL TO FACILITATE THE SMUGGLING OF ILLEGAL ALIENS INTO THE UNITED STATES

THROUGH THEIR OVERSEAS CONNECTIONS. CONVERSELY, THESE SAME GROUPS ARE TASKED BY THEIR MAINLAND CHINA COUNTERPARTS TO TAKE POSSESSION OF THE ILLEGAL ALIENS, ONCE THEY ARE SUCCESSFULLY SMUGGLED INTO THE UNITED STATES. AT THIS POINT, THE CRIMINAL GROUPS ARE OFTEN TIMES RESPONSIBLE TO ENSURE ANY INDENTURED SERVITUDE ARRANGEMENTS OR, THEY TAKE THE OPPORTUNITY TO FURTHER EXTORT THE SPONSORS OF THE ILLEGAL ALIENS FOR ADDITIONAL MONEY BEFORE THE ULTIMATE RELEASE OF THE ALIENS.

AS PREVIOUSLY STATED, IT IS NOT NOW WITHIN THE PURVIEW OF THE FBI TO INVESTIGATE ALIEN SMUGGLING, PER SE. HOWEVER, WHEN ILLEGAL ALIEN SMUGGLING ACTIVITY IS IDENTIFIED AS PART OF THE CRIMINAL ACTIVITY OF A CRIMINAL ENTERPRISE, THE BUREAU'S POLICY IS TO COORDINATE AND SHARE THIS INFORMATION WITH THE IMMIGRATION AND NATURALIZATION SERVICE. THE FBI WILL CONTINUE TO CONCENTRATE ITS RESOURCES ON THE UNDERLYING PREDICATE VIOLATIONS THAT OFTEN ACCOMPANY ILLEGAL ALIEN SMUGGLING, SUCH AS EXTORTION, CONSPIRACY, MURDER, MONEY LAUNDERING, DRUG TRAFFICKING, ETC. ONGOING FBI INVESTIGATIONS, WHICH I AM NOT AT LIBERTY TO DISCLOSE AT THIS TIME, WILL DEMONSTRATE IN TIME WHAT I HAVE JUST NOTED. ONE CASE THAT I CAN DISCUSS AT THIS TIME IS THE FBI/NEW YORK CITY POLICE DEPARTMENT INVESTIGATION OF

THE GREEN DRAGONS. THIS CHINESE CRIMINAL ENTERPRISE WAS BASED IN NEW YORK CITY AND WAS INVOLVED IN A MYRIAD OF CRIMINAL ACTIVITY. ON OCTOBER 2, 1992, EIGHT MEMBERS OF THIS GROUP RECEIVED LIFE IMPRISONMENT SENTENCES AS A RESULT OF THEIR CONVICTIONS UNDER THE RICO STATUTE. ALTHOUGH ALIEN SMUGGLING ACTIVITY HAD BEEN IMPLICATED, THE DISMANTLING OF THE ORGANIZATION OCCURRED BEFORE ANY SUBSTANTIVE INFORMATION OF THEIR EXACT INVOLVEMENT IN ALIEN SMUGGLING HAD BEEN DEVELOPED. HOWEVER, WONG KIN FEI, ALSO KNOWN AS FU CHOW PAUL, THE LEADER OF THE GREEN DRAGONS, FLED THE UNITED STATES TO THE PEOPLE'S REPUBLIC OF CHINA PRIOR TO HIS INDICTMENT. WONG HAS BEEN IDENTIFIED BY THE IMMIGRATION AND NATURALIZATION SERVICE AS ONE OF THE MOST SIGNIFICANT ALIEN SMUGGLERS OPERATING IN THE PEOPLE'S REPUBLIC OF CHINA TODAY. HE REMAINS A FUGITIVE AS A RESULT OF OUR INVESTIGATION. WONG IS CHARGED WITH VIOLATIONS OF RICO-CONSPIRACY, MURDER AND EXTORTION.

TWO OTHER INDIVIDUALS WHO HAVE BEEN IDENTIFIED AS THE MOST SIGNIFICANT ALIEN SMUGGLERS OPERATING IN THE PEOPLE'S REPUBLIC TODAY OF CHINA HAVE BEEN THE TARGET OF FBI RICO INVESTIGATIONS. TSE CHIU CHAN, ALSO KNOWN AS EDDIE T.C. CHAN, HAS BEEN INDICTED ON RICO CHARGES STEMMING FROM AN INVESTIGATION CONDUCTED BY THE CHICAGO FBI. GUO LIANG-QI, ALSO KNOWN AS AH KAY, WHO

HAS GAINED RECOGNITION IN RECENT DAYS FOR HIS ORCHESTRATION OF THE GOLDEN VENTURE DEBACLE, IS ALSO BEING INVESTIGATED BY THE FBI ALONG WITH NEW YORK CITY POLICE DEPARTMENT FOR HIS ROLE AS THE LEADER OF THE FUK CHING GANG.

SO, AS THE COMMITTEE CAN SEE, THE FBI'S STRATEGY WITH REGARD TO THE SMUGGLING OF ILLEGAL CHINESE ALIENS, IS TO FOCUS OUR RESOURCES ON THE VIOLATIONS OF THOSE PREDICATE ACTS ENUMERATED IN THE RICO STATUTE, WHICH ARE BEING COMMITTED BY THE CRIMINAL ENTERPRISE. IN OUR EXPERIENCE, THE ONLY WAY TO STOP ORGANIZED CRIME IS TO COMPLETELY DESTROY THE CRIMINAL ENTERPRISE. THIS IS OUR STRATEGY. WE USE THE RICO STATUTE AND THE TOTALITY OF THE CRIMINAL GROUP'S ACTIVITIES AGAINST THEM AS THE FOUNDATIONS FOR SUCCESSFUL ENTERPRISE INVESTIGATIONS AND DEPARTMENT OF JUSTICE PROSECUTIONS. HOWEVER, IF SMUGGLING ACTIVITY IS IN FACT IDENTIFIED, THEN THIS INFORMATION IS PROVIDED TO THE IMMIGRATION AND NATURALIZATION SERVICE FOR THEIR APPROPRIATE LAW ENFORCEMENT RESPONSIBILITY. MOREOVER, SHOULD THE ADMINISTRATION'S PROPOSAL TO ADD ALIEN SMUGGLING AS A RICO PREDICATE BE ADOPTED, THE FBI WILL UTILIZE THE PREDICATE ACT AS PART OF OUR INVESTIGATION.

ALTHOUGH LAW ENFORCEMENT IN GENERAL HAS ENJOYED SOME SUCCESSES WITH REGARD TO THOSE ASIAN CRIMINAL ORGANIZATIONS THAT CONDUCT ILLEGAL ALIEN SMUGGLING AS PART OF THEIR CRIMINAL ENTERPRISE, IT IS OBVIOUS THAT THE PENALTIES AND SENTENCING GUIDELINES THAT GOVERN ILLEGAL ALIEN SMUGGLING MUST BE SIGNIFICANTLY INCREASED TO MAKE IT MORE OF A DETERRENT TO THOSE THAT ACTUALLY FACILITATE THE SMUGGLING. THE ADMINISTRATION PROPOSAL IN THIS AREA WILL ALSO BE IMPORTANT. AS FURTHER INDICATED IN THE PRESIDENT'S ALIEN SMUGGLING ACTION PLAN, INCREASED EFFORTS MUST BE MADE THROUGH BOTH THE LAW ENFORCEMENT AND POLITICAL PROCESSES FOR BETTER COORDINATION WITH THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, AND OTHER SOURCE NATIONS, TO ADDRESS THIS PERVASIVE PROBLEM, AT ITS POINT OF ORIGIN.

AGAIN, I WOULD LIKE TO THANK THE COMMITTEE FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY, AND TO REAFFIRM THE FBI'S COMMITMENT TO THE ORGANIZED CRIME NATIONAL STRATEGY. IT WOULD BE MY PLEASURE TO ANSWER ANY QUESTIONS OF THE COMMITTEE.

Mr. MAZZOLI. Ms. Sale, let me start with you. We are talking about the plan, the plan, the plan. When is this plan going to be revealed to us?

Ms. SALE. That is in effect; a tasking by the President to about 12 participating agencies requesting—

Mr. MAZZOLI. No, please. I do understand that because, in fact, when we had our meeting on the 16th—

Ms. SALE. You have seen that?

Mr. MAZZOLI [continuing]. And, again, I have read the press release from the White House on June 18th which really gives quite a lot. It talks about the breakdown. We combat smuggling at the source or measures to interdict and redirect smuggling ships which might still be in transit, modify the procedures used to adjudicate entry in your case there, and also tighten law enforcement efforts, including the RICO predicates.

It is a fairly long program. But, I mean, it is a program that basically has been sitting around for a while. When are we going to see the actual implementation of it then?

Ms. SALE. I am going to assume you are asking for a legislative proposal because the actual implementation is in effect with regard to the coordination required between all the participating agencies with regard to clarification of roles and authorities and responsibilities. There is ongoing a review of our legislative program that has two pieces to it: the first piece being the details of a proposal to expedite our exclusion proceedings, as you discussed earlier this morning, and the second piece being the proposal for enhanced authorities to deal with the organized criminals associated with alien smuggling.

The third piece of the proposal is an administrative review to come up with an alternative under the regulatory process that is in place today for affirmative asylum purposes. We have an outside commitment of a September promise to you. I am very, very hopeful that we are looking at something shorter than that, sir, but I can't give you a precise date at this point.

Mr. MAZZOLI. I remember on the 16th when Ms. Reno was asked a question she said not later than September.

Ms. SALE. That is right.

Mr. MAZZOLI. Is that still the timetable?

Ms. SALE. I think we are much closer than that with regard to a legislative proposal.

Mr. MAZZOLI. Expedited like exclusion and the criminal sanctions which come to the gentleman's committee.

Ms. SALE. And to the criminal statutes. The issue of the affirmative asylum program I think will take a little bit longer.

Mr. MAZZOLI. Well, we will get into that. Let me shift slightly then. Let me stay on that for this one point. Nothing is going to be successful unless you have money and people. Now is any part of this plan for September going to give you more people, any supplemental that the President is going to be asking Congress for?

Ms. SALE. There are not at this point formal plans for a supplemental; no.

Mr. MAZZOLI. Well, I think there should be. I believe that there is no way that we are going to get this done because Mr. Fish read the figures and he could have gone beyond Sweden to Germany

which allegedly has something like eight or nine thousand asylum officers. Now they may not be as trained as our people, nor as productive. But raw numbers indicate that our 150 are pretty lonely soldiers, just like Horatios at the bridge, it is very difficult.

The question that Mr. Canady and I got into, the whole question of the PRC and its one-child policy, and the Immigration General Counsel's opinion, and the order and the final order—can you give me some idea, am I correct in this, that there is no presumption under either the Executive order of April 1990 or anything that flows from that that automatically and presumably gives some applicant, single man, married man, whatever, a right to stay here? That is just a fact that is adjudicated and evaluated by the asylum officer; is that correct?

Ms. SALE. That is, in fact, correct.

Mr. MAZZOLI. So what the President said in April 1990 was to give enhanced consideration, no presumption, but give enhanced consideration following on the Chang case, which suggested that policies like in place, of course, abortion or whatever else, are not automatically a grant of asylum here as long as the effort is pointed at population control, not punishment of the individual.

Following on Chang we had a first cut of some kind of an order, some kind of an implementation. Now tell me, are we operating with that or with this final order that we keep hearing about, or the final version?

Ms. SALE. We are operating under the Executive order and have in the process this final order that recognizes that in the instance of a spouse that enhanced consideration can be considered.

Mr. MAZZOLI. We are operating solely under the interim rule?

Ms. SALE. Under the interim rule under the Executive order. Your articulation of the Executive order is precisely correct. It simply says you will give enhanced consideration to this issue, but we are operating under a case-by-case, individual-by-individual adjudication. And I think it is important for me to share some data with you, if I may.

Mr. MAZZOLI. Before we do that, Ms. Sale, let me just—so I am clear, we are operating under the interim rule which suggests that an individual whose wife is back home can still plead and be granted asylum based on the coercive policy?

Ms. SALE. That is right.

Mr. MAZZOLI. We are still operating under the interim rule. I mean that is not even realistic. When is a final rule going to go into effect, and can you reexamine the cases determined under the interim rule?

Ms. SALE. I don't think there is an intent to retroactively examine the cases that have already been adjudicated. There is clearly a final rule about to be issued. More importantly, the entire context is under review by this Attorney General at the direction of the President, and she has before her two cases from the Board of Immigration Appeal that she will need to make a determination on. She has not finished that. It is an extremely complicated set of issues.

But we are not now granting asylum to single males just because they say they may someday be married to somebody who might be

caused to follow a course of family planning. That is not an accurate statement.

Mr. MAZZOLI. Well, let me ask my final because my time has expired and I want to be sure I am honest with my friends.

Ms. SALE. Yes, sir.

Mr. MAZZOLI. Is that 85 percent figure that we hear bandied about correct? Eighty-five percent approval of Chinese——

Ms. SALE. In 1992, the affirmative asylum program considered 330 Chinese asylum cases: 193 were closed because the people didn't show; 173 were granted; 79 were denied. If you only consider the grants and the denials, there is a 75-percent approval rate.

Mr. MAZZOLI. Seventy-five. Not 85, 75.

Ms. SALE. That is right, 75.

Mr. MAZZOLI. That is considering the 173 and the 79, only those?

Ms. SALE. Only those.

Mr. MAZZOLI. Disallowing the 193.

Ms. SALE. If you consider the closed cases, the no-shows, then the number goes down to 42 percent. The numbers in 1993 appear to be down from that on a percentage basis although the year isn't up yet. We have looked at the grants in the immigration judge process as well since that is also at issue. Of 1,500 cases, 481 had grants of asylum, 570 were denied, and another 500 were closed either for no-show or other instances of that nature.

Mr. MAZZOLI. So of the 330 that went to the immigration judges——

Ms. SALE. That is right.

Mr. MAZZOLI [continuing]. There was a 75-percent approval discounting those who didn't show up? Of the 1,500 that went to the asylum officers under the independent process, 570 were denied, 481 were permitted.

Ms. SALE. That is correct.

Mr. MAZZOLI. If you disallow the 500 that didn't show up. So you have a negative return in that.

Well, my time has expired. We will have to follow up on that. But anyway, the gentleman from Florida.

Mr. CANADY. Thank you. I would like to follow up on that. I think it is important to understand that there is a distinction here between the approval rate in the affirmative asylum process and the situation where people are in exclusion or deportation proceedings. I appreciate you bringing out those statistics because I think that the numbers that we have seen, this 85-percent is a myth. It does not reflect the reality of what is happening under the existing Executive order.

Now, as you can tell from my comments earlier, I think we have got problems with our immigration policy and the enforcement of our immigration policy. I do not think that there is a particular problem with the implementation of the policy with respect to China's coercive population control program. That is something I want to say.

Let me ask another question of counsel, Mr. Urgenson.

Mr. URGENSON. Yes, sir.

Mr. CANADY. One of the concerns that we hear expressed whenever we are looking at proposals to change the law in this area are concerns about due process, and I think those are important con-

cerns and I believe that we have to take those into account. But I think it is important that we have a clear idea about what the constitutional dimensions of this issue are.

Now, it may be that once we determine what is constitutionally required we would wish to go beyond that as a matter of policy. But I would like for you to give us your view of what we are constitutionally required to do when someone shows up on the shores of the United States, is not a citizen, seeking to come into the country under, for instance, a claim of asylum. What due process must we give as a matter of constitutional law to such a person?

Mr. URGENSON. It is an excellent question, Mr. Canady. Unfortunately, it is not one that I would be in a position to answer. As a Criminal Division person, I am in the law enforcement business and I can talk about the enforcement of the particular criminal statutes. I would defer to INS on a constitutional issue dealing with noncriminal cases.

Mr. CANADY. Ms. Sale, could you try to address that?

Ms. SALE. The advice that I have from counsel both in INS and the Attorney General's Office is that the writ of habeas corpus is the maximum required under the Constitution to ensure due process.

Mr. MAZZOLI. Maximum.

Ms. SALE. Exactly.

Mr. MAZZOLI. It is not the minimum, but the maximum.

Ms. SALE. It is what you have to have. Anything else is administratively self-imposed.

Mr. CANADY. We can provide something as a matter of policy over and above that.

Ms. SALE. That is right.

Mr. CANADY. But all of these elaborate procedures that we have, appeal after appeal after appeal under the existing law, which are said to be required by due process by some people, are not in fact required by our constitutional standards of due process. Is that correct?

Ms. SALE. Not as I understand it. That is right.

Mr. CANADY. Thank you.

Mr. MAZZOLI. Thank you very much. The gentleman's time has expired.

The gentleman from New York.

Mr. SCHUMER. Thank you, Mr. Chairman. I thank the witnesses for their patience.

Ms. Sale, I would like to know about—I want to go back to the 1989 regulation where INS adopted a policy declaring China's family one-child rule to be persecution sufficient to validate an asylum claim. First, doesn't that basically make almost a billion Chinese nationals into refugees?

Ms. SALE. Not necessarily.

Mr. SCHUMER. Because?

Ms. SALE. Because we make determinations on a case-by-case basis, and, for instance, a single male who says maybe someday he might get married and maybe someday this rule may apply to him is not generally a person who we would consider to have a valid claim.

Mr. SCHUMER. Would it apply to every married male and female who have one child?

Ms. SALE. Based on country conditions and our assessment on a case-by-case basis, I think there is a higher likelihood of that.

Mr. SCHUMER. Have you rejected any people who have been able to prove that they are married and have one child?

Ms. SALE. I don't have data with me of that specific nature.

Mr. SCHUMER. The overwhelming percentage—right.

Ms. SALE. Let me give you an alternative piece of data. We have recently pulled 134 instant cases in the affirmative asylum program, not under the immigration judges—

Mr. SCHUMER. Right. Instant means pending?

Ms. SALE. No. Approved last year—and reviewed the facts on granted determinations. Seventy-eight percent of them, 104, were granted asylum predicated on political claims; 16 percent on the family single-child policy; and 8 percent on other items, principally religious grounds.

Mr. SCHUMER. Were these random? This was randomly pulled?

Ms. SALE. It is basically 80 percent of the ones that were granted last year, so it is more than random. And the others we just weren't able to access readily. We really did pull every file that we could—

Mr. SCHUMER. So only 200 Chinese nationals have been granted asylum in the last year.

Ms. SALE. In 1992, the affirmative asylum program only granted 173 asylum determinations to People's Republic of China candidates.

Mr. SCHUMER. Just to clarify for everybody here, because we always have trouble with the affirmative program versus the other, the deportation. Who qualifies for—if I am on the *Golden Venture* and I land, and the minute an INS agent comes up to me or I walk—I walk over to an INS agent and say, I demand asylum for the following reasons. Is that in that category?

Ms. SALE. No.

Mr. SCHUMER. No.

Ms. SALE. You would be put under exclusion proceedings and your asylum claim would be considered by an immigration judge. And the immigration judges in 1992 granted 481 cases.

Mr. SCHUMER. Who would be in the first category?

Ms. SALE. I beg you pardon?

Mr. SCHUMER. I mean hypothetical.

Ms. SALE. Who would be in the first category?

Mr. SCHUMER. Yes.

Ms. SALE. Somebody who has already entered the United States.

Mr. SCHUMER. Legally.

Ms. SALE. Or illegally. Somebody who walked in and we didn't catch them when they walked in or who sailed in and we didn't catch them when they sailed in and knocks on our door and says, Hello. I would like to plead for asylum.

Mr. SCHUMER. OK. At the very least, given what you have said here, I would guess that several hundred million Chinese, people from the People's Republic of China, would be eligible.

Ms. SALE. I am not going to speculate.

Mr. SCHUMER. Well, why not, it is a part of your job.

Ms. SALE. Not on the record, sir.

Mr. SCHUMER. It is a part of your job to give us, you know, an educated guess on this.

Ms. SALE. I do not have enough information about the demographics of the population of China to give you an answer to that.

Mr. SCHUMER. Ms. Sale, I like you very much. You are a very nice person.

Ms. SALE. Thank you very much, sir. I hope you like me after this hearing.

Mr. SCHUMER. Yes, I still do. But I mean one of the things we have to do and you have to do to weigh whether this policy should continue is get an idea of the number.

Ms. SALE. The Attorney General has staff working on that as a matter of policy and I am sure that she will consider those issues. I am not on that task force.

Mr. CANADY. Would the gentleman yield?

Mr. SCHUMER. I would be happy to yield to the gentleman.

Mr. CANADY. I think it is important, though, to look at the 16-percent figure based on the analysis of the cases. I think that is a telling number. We are only seeing 16 percent of the people in the affirmative asylum process.

Mr. SCHUMER. Yes. I am reclaiming my time.

That is such—the 400 people or the 130 people are hardly a representative sample at all. Those are people——

Mr. CANADY. That is the total——

Mr. SCHUMER. No, no, no. But those are the people—I am asking the potential universe and that is not a random sample at all, so I really dispute the gentleman's view that the 16-percent figure is valid at all, at least for the question I am asking.

OK. I guess we are not——

Ms. SALE. The universe under our current policy is anyone in the world who is here can claim asylum.

Mr. SCHUMER. I understand.

Ms. SALE. Whether they will be favorably considered is something that, you know, would be speculative.

Mr. SCHUMER. Right. Can I ask you this? I mean are you allowed to—is the policy now being reexamined?

Ms. SALE. Yes. The Attorney General has it under her review.

Mr. SCHUMER. OK. Next question. IRCA has criminal penalties that could be used to go after the sweatshops, where many of the people end up, you know, in these horrible, awful, spine-chilling situations. Are these penalties being used at all? Or do I ask that question—I don't know if that goes to——

Ms. SALE. I think it goes to me, unless—I am happy to defer to counsel as well.

Mr. URGENSON. Go right ahead.

Ms. SALE. Chairman Mazzoli held a hearing, in fact, on sanctions recently. I believe you were there.

Mr. SCHUMER. I was.

Ms. SALE. The penalties are being used. The penalties are principally fines.

Mr. SCHUMER. We didn't ask about sweatshops, though. That is what I want to know.

Ms. SALE. No, we didn't ask about sweatshops. You know, our agenda both as a factor of resources and as a factor of procedure has been to strive for voluntary compliance with the sanctions program or the sanctions statute. We do pursue lead-driven investigations and those are either coming out of the Department of Labor and frequently the local competitor. We have been very actively involved in FBI and New York PD initiatives pertaining to criminal activity in places like New York where there are sweatshops.

Mr. SCHUMER. Right.

Ms. SALE. Generally speaking, we are going after those guys for tougher purposes than illegal employment, to be perfectly honest.

Mr. SCHUMER. Could I ask one more question?

Mr. MAZZOLI. Certainly.

Mr. SCHUMER. Thank you, Mr. Chairman. This is—well, it is not quite parochial, and that is, as you know, and when the Attorney General and you and I met last time we brought up the idea of a detention facility at JFK Airport. At that point you had given me an update. Can you give me the current status? After all it was 3 weeks ago and I thought it would be built between now and then.

Ms. SALE. Well, it won't be built. I mean we were expecting proposals this month.

Mr. SCHUMER. Right.

Ms. SALE. I believe we have received them. If we go through the competitive procurement process that we are required to go through, we expect to see a 6- to 12-week build-down schedule and a facility available in January to February.

Mr. SCHUMER. In January.

Ms. SALE. That is basically what we are looking at now.

Mr. SCHUMER. How can you build it that quickly? That is the question.

Ms. SALE. Well, we won't build it. We will pay someone else to do it.

Mr. SCHUMER. Who has it?

Ms. SALE. They may either have it or they may have an existing building that can be retrofitted somehow.

Mr. SCHUMER. So January is still the deadline, the target.

Thank you, Mr. Chairman.

Mr. MAZZOLI. The gentleman's time has expired.

Just so I am clear, because I had it exactly backwards. The 330 cases of asylum were handled under the affirmative asylum process?

Ms. SALE. That is correct.

Mr. MAZZOLI. And that was where 173 grants of asylum were made and 79 were denied?

Ms. SALE. Under immigration asylum officers. The affirmative asylum process.

Mr. MAZZOLI. Well, wait 1 minute. The affirmative program goes to the specially trained. That is part of that 150 cadre, right?

Ms. SALE. That is correct.

Mr. MAZZOLI. Your shop?

Ms. SALE. That is right.

Mr. MAZZOLI. INS people. Seventy-nine granted out of 173. The other 1,500 cases went to the immigration judges that are not part of your shop.

Ms. SALE. Yes, sir.

Mr. MAZZOLI. They are under the Justice Department, and they made about a 50-50 call.

Ms. SALE. Yes, sir.

Mr. MAZZOLI. Using, I assume, the same country conditions, the same reports, the same data. How can they have a 50-50 and you all have a 75-25?

Ms. SALE. I would make the distinction given the pipeline on this process. It may well be the people we are looking at are actually the Tiananmen Square group that having waited 3 years for their queue to come up and are finally coming through our process. The IJ's are dealing with more current cases.

Mr. MAZZOLI. Well, that may be.

Mr. SCHUMER. If the gentleman would yield—that would explain the 16 percent which is a very low number.

Mr. MAZZOLI. We have to go to a quorum call and we still have lots of questions. Are you all able to come back?

Ms. SALE. For you, yes.

Mr. MAZZOLI. Could you do so? Am I correct that we will have a vote after this? This is preparing us for the vote on the rise and that sort of thing?

How about an hour? Would the other panelists be able to come back and join us?

Mr. URGENSON. Certainly.

Mr. MAZZOLI. And also, I understand that your General Counsel is in this room?

Ms. SALE. Yes, sir, he is.

Mr. MAZZOLI. Why not have him—he is the one who has been interpreting this general order here. Why don't you have him come forward for the balance?

Ms. SALE. Thank you, sir.

Mr. MAZZOLI. We will have our recess.

[Whereupon, at 12:50 p.m., the subcommittee recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

Mr. MAZZOLI. The subcommittee will come to order.

I want to thank all of you for your patience.

My recollection is that we were in a little bit of disagreement on numbers in relationship to the PRC and the Executive order and the implementation of an order by the General Counsel. If I understand correctly, there is, using the—what I would call the regular asylum process as against the affirmative, the regular being that taken care of by the Immigration Service—by the Justice Department, right? Am I correct?

The regular process is taken care of by the Justice Department with immigration judges, right, not directly by you?

Ms. SALE. Yes.

Mr. MAZZOLI. And under that process, 330 cases were reviewed?

Ms. SALE. No, sir. Those are the cases for INS.

Mr. MAZZOLI. INS cases?

Ms. SALE. Yes, and the 1,500—

Mr. MAZZOLI. Those are the affirmative cases?

Ms. SALE. Yes, sir.

Mr. MAZZOLI. The affirmative cases done by INS asylum officers is 330, 193 were discounted because they failed to show at some stage in the process. One hundred seventy-three were granted asylum, 79 were denied asylum.

Ms. SALE. Fifty-nine, Mr. Mazzoli.

Mr. MAZZOLI. Fifty-nine were denied asylum, and taking the total number of 330 cases, it is a 75-percent.

Ms. SALE. No. Taking the total number, the grants would be about 42 percent. Taking just the ones that we adjudicated, the percentage would be 75.

Mr. MAZZOLI. And I believe it was said at some point that of that 75 percent, only 16 percent were with regard to the order or anything deriving from that; is that correct?

Ms. SALE. It is of a smaller number. There were 173 and the 75. We have manually looked at 134 of those files and 16 percent of those, but I am going to assume that the number will hold.

Mr. MAZZOLI. Roughly speaking, it is somewhere below 20 percent of those cases are derived from—

Ms. SALE. That is correct.

Mr. MAZZOLI. And with regard to the—what I guess would be considered regular asylum program or the nonaffirmative asylum program handled by the immigration judges of the Justice Department, roughly 1,500 cases were handled, roughly 500 were dropped over because they didn't show or something, 481 were granted asylum and 570 were denied asylum?

Ms. SALE. That is correct.

Mr. MAZZOLI. I guess the question that I ask, and maybe it was answered in part, is there appears to be, depending on how many total numbers, but if you used the dropped out numbers under the Justice Department immigration total, it is roughly 50/50 or it is slightly less than 50 percent grant of approval.

Ms. SALE. Correct.

Mr. MAZZOLI. Using the dropout rate on the work done by the immigration judges, asylum officers, it is roughly 75 percent—

Ms. SALE. Yes, sir.

Mr. MAZZOLI [continuing]. That are granted?

Ms. SALE. For 1992.

Mr. MAZZOLI. Using 1992. Now, I remember something about possibly there were cases in 1992 that are not necessarily reflective of what we have in 1993 or might come up in 1994 and therefore these numbers may not be absolute predictors.

Ms. SALE. I am conjecturing that given the pipeline, that is to say, how long it takes us to get to a case in the INS affirmative asylum program, that some of these cases may actually date back to that Tiananmen Square period where the cases under the immigration judge will tend to be somewhat less old.

It is also only speculation on my part, but the ones under the immigration judge are people who we have caught at airports for the most part under exclusion proceedings and so are more probably people who have come in with fraudulent documents and that sort of thing. I don't have that much data to tell you that.

Mr. MAZZOLI. Is there any percentage of the 481, 570 caseload, percentage of those that were adjudicated on the basis of family planning or anything relating to the Executive order?

Ms. SALE. I am sorry, sir. We don't have those files in our jurisdiction.

Mr. MAZZOLI. Can you ask for—

Ms. SALE. We can ask to look at them. It takes a manual analysis. The computers in either of our institutions keep track of numbers and identify cases but don't keep track of the causes for which the grants are made.

Mr. MAZZOLI. Can I ask a logical question? Why don't they?

Ms. SALE. Why don't they? Probably because it didn't occur to us at the time that this would be a question.

Mr. MAZZOLI. I mean, wouldn't it be a normal question under any circumstances to ask for what reason people ask asylum and on what basis it is granted? It seems like that would be a fairly normal question, wouldn't it, though?

Ms. SALE. Yes.

Mr. MAZZOLI. It wouldn't take a rocket scientist to figure that out. Once you were asked that question, why didn't you do that? To help this committee along, and we are trying to help you. I think having data, having numbers, having causation is obviously very important because we are trying to figure out what can we do without changing the law or what legal changes do we have to make.

Mr. REES. I am rather confused. I don't understand all the legal jargon. I know I am a lawyer but this thing about in re: Chang and the early decisions under Chang which basically said if the policy is aimed at population control rather than at the person, that that is not a grounds for exclusion.

So apparently concern was raised and about that time the President may have announced his Executive order in April 1990, and at some point thereafter you interpreted that and you sent out instructions to the field; is that correct? And what were those instructions and are they embodied in the interim rule? Is that what we call the interim rule?

Mr. REES. The instructions were simply a recapitulation of the existing orders, the Executive order and the interim rule.

Mr. MAZZOLI. You say and the interim rule, or did that constitute—

Mr. REES. Yes.

Mr. MAZZOLI. Was there an interim rule?

Mr. REES. There was an interim rule.

Mr. MAZZOLI. Who issued that and prepared it?

Mr. REES. It would have been Attorney General Thornburgh and that was before I came to INS. It was actually right before the Executive order. It was all part of the same.

Mr. MAZZOLI. That is what I noticed. I noticed in the sequence of events it actually preceded the Executive order. I found that rather strange. Is that normal?

Mr. REES. I think the historical reason for it is that the Congress passed by overwhelming margins the emergency—the Emergency Chinese Immigration Act. I may not have the name right.

Mr. MAZZOLI. Well, whatever. I know what you mean.

Mr. REES. And President Bush vetoed that bill and he promised that he would incorporate—

Mr. MAZZOLI. Despite the veto act under it?

Mr. REES. He said, I will include all versions of the bill and the reg was viewed to be pursuant to that promise.

Mr. MAZZOLI. Later the President got around to the Executive order itself?

Mr. REES. That is right.

Mr. MAZZOLI. And then pursuant to that, you have done what?

Mr. REES. In fairness, Mr. Chairman, I don't think we have done a whole heck of a lot. I think there have been some caricatures of what we did and, I would like to submit the memo that we sent out, the notorious memo for the record, because all it did is recapitulate.

It said we don't believe incredible stories. It didn't say we grant all the cases. It says——

Mr. MAZZOLI. Did you have the magic words in there, enhanced consideration?

[The memo of Mr. Rees follows:]

Asylum requests based upon
coercive family planning policies

Regional Counsel and
District Counsel

Office of the ^{ECW}
General Counsel

Department of Justice and INS policy with respect to aliens claiming asylum or withholding of deportation based upon coercive family planning policies is that the application of such coercive policies does constitute persecution on account of political opinion. This policy is embodied in the Attorney General's directives of August 5, 1988 and December 1, 1989; in the President's directive of November 30, 1989; in Executive Order No. 12711, § 4, published on April 13, 1990 at 55 FR 13897; and in the interim final regulations published on January 29, 1990 at 55 FR 2203 [Attorney General Order No. 1391-90; INS No. J-89].

Pursuant to this Department and INS policy, the INS will regard an applicant for asylum (and the applicant's spouse, if also an applicant) to have established presumptive eligibility for asylum on the basis of past persecution on account of political opinion if the applicant establishes that, pursuant to the implementation by the country of the applicant's nationality of a family planning policy that includes forced abortion or coerced sterilization, the applicant has been forced to abort a pregnancy or to undergo involuntary sterilization or has been persecuted for failure or refusal to do so.

The INS will regard an applicant for asylum (and the applicant's spouse, if also an applicant) to have established presumptive eligibility for asylum on the basis of a well-founded fear of persecution on account of political opinion if the applicant establishes a well-founded fear that, pursuant to the implementation by the country of the applicant's nationality of a family planning policy that includes forced abortion or coerced sterilization, the applicant will be forced to abort a pregnancy or to undergo involuntary sterilization or will be persecuted for failure or refusal to do so.

The INS will regard an applicant for withholding of deportation as having established eligibility for such withholding if the applicant establishes that it is more likely than not that, pursuant to the implementation by the country of the applicant's nationality of a family planning policy that includes forced abortion or coerced sterilization, the applicant will be forced to abort a pregnancy or to undergo involuntary

sterilization or will be persecuted for failure or refusal to do so.

As in other cases involving asylum and withholding of deportation, the burden of proof is on the alien. As in all such cases, however, the trial attorney should bear in mind that the INS is charged with the vigorous enforcement not only of those immigration laws which provide for exclusion or deportation, but also of those which provide for asylum, withholding of deportation, and other benefits in appropriate circumstances. The trial attorney's goal should not be to secure a denial of such benefits whenever an argument can be made for denial, but to bring out the true facts and to see the law correctly applied in each case.

Asylum and withholding of deportation cases often turn on the credibility of the witnesses and other evidence. Although the provision of Executive Order No. 12711 for "enhanced consideration" does not require an INS trial attorney to make an affirmative recommendation based on evidence that he or she sincerely regards as incredible, it is especially important in these cases that the attorney be engaged in a genuine search for truth. The INS attorney should be just as diligent in searching for indications that the applicant or the applicant's evidence may be credible as for indications that it may not be.

Trial attorneys should of course bear in mind that an applicant for asylum on the ground of future persecution need not prove the probability of such persecution beyond a reasonable doubt, or even that persecution is more likely than not, but only that he or she has a well-founded fear of such persecution. If, in light of the applicant's evidence and the information available to INS about the coercive family planning policies of the country of nationality, the trial attorney believes that the applicant fears the possible imposition of such policies upon return to such country, and that a reasonable person would have such a fear, the trial attorney should conclude that a well founded fear has been established.

With respect to whether particular sanctions imposed in the enforcement of coercive family planning policies constitute persecution, Executive Order No. 12711 requires that INS give "enhanced consideration" to claims based on past or prospective application of such policies. The Attorney General's directive of December 1, 1989, specifically provides that "[i]f the applicant establishes that such an applicant has refused to abort or be sterilized, then the applicant will now be considered to have established a well-founded fear of persecution on the basis of political opinion." INS attorneys should therefore not argue that sanctions imposed in the enforcement of coercive family planning policies constitute "prosecution not persecution"

because they are widely imposed or because they might not constitute persecution if imposed for a nonpolitical offense.

Although a well-founded fear that the applicant will be subjected to a coercive family planning policy is sufficient to justify a grant of asylum even in the absence of other supporting circumstances, the cited directives and regulations also require INS to give additional weight to any other factors (such as overt political activities, membership in an ethnic or religious minority, and family background and history) which may contribute to a determination that an applicant is eligible for asylum or other benefits.

In cases involving detained aliens who claim asylum and/or withholding of deportation under the above criteria (and who are not ineligible for asylum or withholding under Section 243(h)(2) of the INA and/or 8 C.F.R. 208.14(c)), the alien shall be placed in proceedings, where he or she must establish the claim. The District Counsel shall review the file prior to the hearing and make a recommendation to the District Director regarding parole or release on bond. In cases where it appears likely that the applicant will present credible evidence of past persecution, or of a well-founded fear of future persecution, in accordance with the above criteria, and in the absence of other circumstances warranting detention, the District Counsel shall recommend parole or release, as appropriate.

At the hearing, if the Service trial attorney determines that the criteria have been met, the trial attorney should recommend a grant of asylum and/or withholding of deportation. If the Immigration Judge should nevertheless deny the claim(s), the Service will not oppose an appeal from such denial. In such cases the INS will move the BIA to terminate the proceeding. When the BIA issues an order terminating a proceeding, the alien, or his or her counsel, should be instructed to reapply for asylum with the Service. Such applications should be forwarded to the Assistant Commissioner, Office of Refugees, Asylum, and Parole. When the alien is in exclusion proceedings, he or she may be paroled on humanitarian grounds pursuant to 8 C.F.R. 212.5 pending the action by the Board and the approval of the application by the Service.

Grover Joseph Rees III
General Counsel

Mr. REES. Yes, but we defined—you see, all that enhanced meant as far as we were concerned is enhanced beyond the rule of Chang where everybody lost. In other words, by enhancing consideration, the Executive order was simply raising—

Mr. MAZZOLI. Was that the clear import of the—first of all, the vote we took and the instructions to Mr. Thornburgh and then of the following Executive order?

Mr. REES. I think the clear import was—

Mr. MAZZOLI. To change Chang, that was the whole idea?

Mr. REES. Yes. That was specifically mentioned. The Chang case was specifically mentioned, not by name, but by source.

Mr. MAZZOLI. By whom, Thornburgh?

Mr. REES. A number of Members of Congress in the debate. I don't know—

Mr. MAZZOLI. By Thornburgh in his order?

Mr. REES. No. The Chang decision was not mentioned.

Mr. MAZZOLI. By the President in his Executive order?

Mr. REES. Neither one as mentioned.

Mr. MAZZOLI. So really enhanced consideration is just simply look at these cases more carefully. There is no presumption. There is no conclusive case presented; is that correct?

Mr. REES. Except that enhanced consideration was further defined in the Executive order. It said enhanced consideration as implemented by the interim rule and the interim rule did have some content.

The interim rule set down a number of rules. Again, they don't say grant all the cases, but they said if you really believe the person is going to go back and face a forced abortion or forced sterilization, then that should be construed as resisting this policy and it should be construed as—

Mr. MAZZOLI. If I understand correctly, maybe I am wrong because my time has expired and I don't want to keep this up, but under the interim rule, which I guess is still in effect, individuals can apply even though their spouses are back home and in effect cloak themselves in their spousal—in the coercion to the spouse; is that correct?

Mr. REES. That is correct.

Mr. MAZZOLI. Why would that be correct? Why would you do that? Why would you not have carried out and corrected that somehow?

Mr. REES. I happen to have drafted something which would correct it.

Mr. MAZZOLI. Is that the final rule you are talking about?

Mr. REES. Yes. I worked on—

Mr. MAZZOLI. Where is that final rule?

Mr. REES. That is currently at the Federal Register, part of this whole review that the Attorney General has to do to decide—

Mr. MAZZOLI. How long has it been sitting since—

Mr. REES. Since January.

Mr. MAZZOLI. Since January.

Mr. REES. But that is not—remember, administrations change and the new administration felt that it needed to take a look—

Mr. MAZZOLI. January the 20th. That is exactly what I am saying. So the incoming administration has had since January the

20th to do something with this final rule and have not done anything with it.

Mr. REES. Partly because they are trying to review the whole situation, I think.

Mr. MAZZOLI. What is there to review? Everybody knows that that is a bizarre handling of the case. That is obviously not meant to be carried out. I mean, there is nothing to review, it seems to me. Maybe a review of a lot of things, including eventually, I hope, something on expedited exclusion, but what is there to review?

Mr. REES. Well, there are people who would like something even more restrictive than the final rule. There are people who would like to go back to the Chang rule, not necessarily people in the Government, but that is one of the arguable positions is that you should go back to the Chang rule.

The final rule, although more restrictive than the interim rule, is more restrictive than Chang.

Mr. MAZZOLI. I don't even know exactly what the General Counsel does or what authority you have, but what authority would you have right now to instruct the field?

Mr. REES. Well, under existing law, actually this memo tried to tighten up that one loophole you talked about.

Mr. MAZZOLI. When was that? What date is that?

Mr. REES. This is November 1991, and we actually said that the only time in this memo—that the only time that a spouse should get asylum on the basis of his or her spouse's persecution is if the spouse was also a coapplicant.

Mr. MAZZOLI. That is right, which is the final rule basically.

Mr. REES. But it was subsequently pointed out to me that that was in contravention of the existing rule. So with some reluctance with reference to that particular group, we have gone on enforcing, pending a final resolution of this issue.

We are simply doing what we think we have to do.

Now, again, I think the numbers are very small contrary to what—

Mr. MAZZOLI. I was going to ask you that. How much of a dead horse are we beating here?

Mr. REES. Well, the total number of PRC asylum grants—

Mr. MAZZOLI. I am talking about this particular category of spouses who—or—yes, spouses who are claiming the coercion to a spouse back in PRC.

Mr. REES. As a percentage of all the people who are claiming coercive family planning, it is a pretty high percentage, because although it is not true that most of these people are single men, that is a myth, it is true that many of them are married men who left their spouses behind.

Mr. MAZZOLI. So you say a high percentage of this 16 percent are those—is that category?

Mr. REES. That is my own anecdotal observation. I have seen a lot of these cases.

Mr. MAZZOLI. Thank you. My time has expired.

The gentleman from Florida.

Mr. BECERRA. Mr. Chairman, if I could ask a question. I think we are almost entering into the second round. I haven't had a first bite at the apple yet.

Mr. MCCOLLUM. I haven't either.

Mr. MAZZOLI. I don't think the gentleman from Florida did. We went immediately to the gentleman from Florida. Mr. McCollum has not asked questions yet.

Mr. MCCOLLUM. We have all been in and out of this place today. We apologize to Ms. Sale and the rest of you because it has not been a pleasant way to conduct this hearing.

I am curious, if somebody is denied an application for asylum—you have a number of denials who are Chinese nationals—what is happening to them? Are they actually being sent home? Have they been sent home? Are we sending them home?

Ms. SALE. Some have been deported. You need to remember that the process is such that having been denied an application for asylum either by an immigration judge or by a INS asylum officer, in either category, there are due process opportunities to the Board of Immigration Appeals and to the Federal courts, and those are exercised by many of the people who are initially denied.

Mr. MCCOLLUM. But there is no governmentwide policy that says we won't send somebody back?

Ms. SALE. No, there isn't, sir, and I don't remember the numbers off the top of my head, but there are a number of Chinese that have been deported in the last year. It is small.

I mean, admittedly, but there are a number of them.

Mr. MCCOLLUM. Do you know what the level of legal immigration for Chinese is presently?

Ms. SALE. Legal immigration?

Mr. MCCOLLUM. Right. How many are immigrating legally? Anybody know that?

Ms. SALE. I am sure we can provide it for the record, the statistics. I just don't know the number because we don't—we can calculate that after the fact, but the preference system doesn't work on that basis now.

Mr. MOODY. I believe it is around 20,000.

Ms. SALE. 20,000 is what—that is immediate relatives.

Mr. MOODY. Then if you consider those coming from other countries of Chinese descent, it increases.

Mr. MCCOLLUM. But actually directly from China is 20,000 plus immediate relatives?

Ms. SALE. I defer to the State Department.

Mr. MCCOLLUM. That just gives me a perspective, that is all.

I would like to change the subject. What I am curious about is what has been done to coordinate U.S. law enforcement efforts with regard to this matter with our counterparts in other countries. Is there an ongoing effort to work together?

I know there is a State Department effort, but is there a law enforcement effort going on with the PRC or whoever?

Mr. MOODY. If I may.

Mr. MCCOLLUM. Certainly.

Mr. MOODY. I was lucky enough to head the first delegation of the FBI that went to Beijing in October of last year to meet with the Ministry of Justice officials to discuss specific investigative cases that we had here in the United States that spanned into the Peoples Republic. That was met with very positive results by the Ministry personnel.

Subsequently I have met with approximately 100 other ministry people here in the United States from all the different provinces. Additionally, we have our legal attaché stationed in Hong Kong that regularly goes up to Beijing to meet with the officials up there. We have coordinated with the State Department and RSO located in Beijing to establish an immediate direct line of communication, initial communication, if our legal attaché is not available.

Additionally, in April of this year, the FBI cohosted an international Asian organized crime conference in Las Vegas where we had approximately 1,300 delegates from all around the world attend. We invited the Ministry of Justice from the Peoples Republic of China to attend, to which they sent a delegation.

They didn't attend because of some difficulties they had with the Taiwanese delegation at the time.

Mr. MCCOLLUM. But the bottom line is you are getting along pretty well with them. The question is, is that doing any good? From a law enforcement perspective, are they trying to crack down on illegal smuggling or not?

Mr. MOODY. I believe they are. It takes a little while to get information from there. I know recently there has been increased law enforcement activities up in the Fujien Province. I don't know the specifics of it.

Mr. MCCOLLUM. Shifting slightly off of this, what priority are you and the FBI and other law enforcement agencies other than INS giving to the alien smuggling issue?

Are you devoting a percentage of resources? I know the FBI traditionally has target areas they work on.

Mr. MOODY. In 1987 we targeted Asian organized crime, which was one of our major priorities, and we started refocusing manpower to address this.

At this time we have a little over 200 investigations ongoing, both criminal and intelligence investigations, and we have in excess of 100 agents working the problem.

Mr. MCCOLLUM. Has that been consistently growing since 1987? In other words, you haven't pulled back from the commitment made in 1987?

Mr. MOODY. It has been consistently growing since 1987 because the problem has been growing. But what we are doing is taking from other problems and putting on the Asian problem as it continues to increase.

Mr. MCCOLLUM. The Asian crime problem you perceive is of course broader than alien smuggling. What portion of this is alien smuggling?

Mr. MOODY. The major organization that I know that is involved in the alien smuggling involving the shipping is the—is one particular gang and this is just one aspect of what they do.

Mr. MCCOLLUM. Ms. Sale, the last question in this area, from your perspective but there are other law enforcement agencies as well as the FBI in our country. Do we get the cooperation we need? Are they devoting the resources to support you in your effort in a coordinated fashion on alien smuggling?

Ms. SALE. It varies across the country. As you well know, Mr. McCollum, there are communities where local police are in fact pro-

hibited from collaborating with immigration law enforcement because they consider themselves sanctuary communities.

But in other areas, we have very, very active liaison with local police, with State organizations, and clearly with the Federal organizations. We too have a small number of agents overseas who work both with the host country law enforcement organization as well as with U.S. representatives there, both for intelligence gathering and for support purposes in whatever law enforcement is happening there.

Mr. MCCOLLUM. Let me ask a—

Ms. SALE. And our focus is—

Mr. MCCOLLUM [continuing]. Final wrapup question. In the area of interdiction of drugs, there was a tremendous time of cooperation that occurred later, but not early, in the Customs area with DEA.

Are you getting good cooperation? Is there a working group involving Customs? Because it seems to me that is an alien smuggling area. Do you have a working group that coordinates this sort of thing like we would with DEA and Customs and so on for drugs?

Ms. SALE. We don't have, I think, a formally named working group with Customs. We have held, as has the FBI, Asian and then smuggling conferences, and particularly this spring focusing on the Asian problem.

We participate under the leadership of either U.S. attorneys or the FBI in violent gang task forces in which other law enforcement agencies are engaged, and because we share delegated authorities, both for Customs and for Immigration at land border ports in particular, Customs is very engaged in smuggling that is occurring in those ports as distinct from exercising immigration smuggling law enforcement authority throughout the country.

Mr. MCCOLLUM. Thank you.

Mr. MOODY. If I might expand upon that.

Mr. MCCOLLUM. Certainly.

Mr. MOODY. The FBI is involved in 12 task forces involving Asian organized crime. Of those 12 task forces, 7 of them involve immigration.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

Mr. Moody, let me ask you a question with regard to the RICO statute. I believe you may have touched on it briefly. Is it the Government's opinion at this stage that we cannot use RICO or we can use RICO to go after these smugglers of aliens?

Mr. MOODY. We cannot use RICO for the act of alien smuggling because it is not a predicate act, and that is one of the recommendations, that it be made a predicate act.

What we find is the criminal groups that are involved in this activity are involved in many other activities and we are basically addressing them with 37 other predicate acts involved in RICO.

Mr. BECERRA. So normally these folks are violating more than just the law dealing in human cargo. They are dealing in other contraband as well. We could probably get them under RICO for the other violation of the law under RICO.

Mr. MOODY. That is correct. We have been targeting primarily the violence associated with it. The majority of our investigations involve murder, extortion, items like that, drug trafficking.

Mr. BECERRA. I know maybe the research and your versions are still at the early stages, but do you have any idea what percentage the human cargo element is compared to the smuggling activities of these criminal smugglers?

Mr. MOODY. That is difficult to estimate, and it is purely an estimate. What I see if I were looking at that time in a broad perspective is we have one gang that really started getting into this alien smuggling and we are addressing that gang.

But I foresee that other gangs and groups are going to start doing the same thing. They have the infrastructure for bringing drugs into the United States. They have the infrastructure for supporting people coming into the United States, and they are known within the Peoples Republic as people to go to to get to the United States.

Mr. BECERRA. I would imagine, given that bringing over a cache of cocaine is a lot easier than trying to bring over a human body, that you probably have to pay a high price as an individual trying to get smuggled in and that is probably why we see these indentured servitude type proposals because that is the only way the person being smuggled can get into the country.

Mr. MOODY. Well, it is true. To bring in drugs is easier. However, the penalty is much higher than the indentured servitude. All of these people are voluntarily indentured servants whenever they come over here and the violation associated with illegal aliens bringing them into the country compared with the drug trafficking don't compare at all.

So it is a very fast way to make a lot of money with very little exposure criminally.

Mr. BECERRA. So if we were to increase the penalty, as I believe is being proposed, that would hopefully deter the incentive to smuggle people versus contraband.

Mr. MOODY. I believe it would.

Mr. BECERRA. Do we know, again, given the information that we have so far, where most of the smuggled Chinese aliens that have made it into this country are ending up? Do you have any idea, in terms of work?

Mr. MOODY. My intelligence shows New York City.

Mr. BECERRA. Within New York City, in what areas of employment?

Mr. MOODY. I think you are going to find it in all areas of employment. It is going to be the restaurants, it is going to be the sweatshops. It is going to be across the board.

Mr. BECERRA. A lot of the manual labor I suspect.

Mr. MOODY. Yes. A lot of them will get into regular criminal activities to pay off their debt.

Mr. BECERRA. Because I suspect they go into manual labor, is it possible to go after or take more vigorous action against the people that make it possible for these individuals to then become employed?

For example, I know in the Southwest, farm labor contractors take heavy advantage of the fact that there is a large number of

immigrants in the area and they use them and they abuse them. Now, I am wondering if there is any way to go after people who continue that chain of illegal activity by thereafter making it possible to, in essence, enslave these people to do work?

Mr. MOODY. I believe some of the future panelists can address that better than I can. If it is involved in extortion, yes, you can address that in a—under FBI jurisdiction, but the majority of times you don't necessarily have an extorted alien when he comes in.

It may be a family friend or he is a willing victim.

Mr. BECERRA. Thank you very much.

Thank you.

Mr. MAZZOLI. Thank you very much. I appreciate it.

The gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman. Just following up, Mr. Moody, you mentioned there is one gang primarily involved in the smuggling and they are known in China as the people to talk to if you want to come to the United States.

So I take it this is basically a gang or an organized crime syndicate in the United States with contacts in China.

Mr. MOODY. Yes, sir. In fact, what happened is that particular organization, the head of it is in China. Part of the gang is in the United States at this time.

Mr. FISH. Is this known to China—to the Government of China?

Mr. MOODY. The particular individual that is involved here, I have not personally discussed with China before. There is a second individual who is a major mover in this area and he is known to the Chinese as a fugitive from justice from the United States that we are very interested in.

Mr. FISH. Presumably, if it is known to the Chinese populous that there are certain individuals you look up if you want to come to the United States, that information also would be known by the Chinese Government?

Mr. MOODY. If the Chinese Government has sufficient intelligence in that area, yes, it would be.

Mr. FISH. So what cooperation are you getting from the Chinese Government to stop this?

Mr. MOODY. Our relationship with the Chinese police at this time is just developing and we have not received any of the fugitives that we are seeking, but I am optimistic that we will in the future.

Mr. FISH. Is this being conducted law enforcement to law enforcement or do you have the support of the State Department?

Mr. MOODY. We have very strong support of the State Department and the Embassy in Beijing and it is being conducted law enforcement to law enforcement in strong coordination with both foreign intelligence aspects and the State Department.

Mr. FISH. There is a map called China administration and it is my understanding that the province of Fujian is largely the sending area. Is that still true?

Mr. MOODY. Yes, sir.

Mr. FISH. And Fujian is largely—at least one side of it is on the water facing Taiwan and so presumably the people are embarking on a craft at a port in that province. Would that be reasonable?

Mr. MOODY. That is the presumption, yes, sir.

Mr. FISH. Instead of traveling unnecessary large distances?

Mr. MOODY. They may be coming from other locations, but I think the majority of the aliens are——

Mr. FISH. They would have to travel far to get someplace else?

Mr. MOODY. I understand about 1 year ago there was an entire trainload of Chinese that was stopped coming into western Europe up through Russia.

Mr. FISH. Would it be lot to ask the Chinese to police the ports of Fujian? And I think we have also identified, have we not, there is a certain type of smuggler's vessel of choice you might call it, a former drift net fishing boat?

Mr. MOODY. Yes, sir, and that I believe will——

Mr. FISH. Have they been asked to check them out before—with the water coming up to the gunnel to start——

Mr. MOODY. I don't know whether they have been asked that specifically at this stage, but they will be.

Mr. FISH. It would seem reasonable to me, if they want to receive the most favored nation trade status.

Ms. Sale, you mentioned that you needed increased criminal penalties, expanded asset forfeiture and application of RICO statutes. You did not mention enhanced electronic surveillance.

Ms. SALE. That was an oversight on my part. That is on our list of things that will be proposed for your consideration by the administration because we find that so much of this activity occurs either by phone or other venues, and from an immigration standpoint, unless the FBI, and they are gracious enough to extend their authority to us under a special case, we don't have the authority to——

Mr. FISH. What cooperation are you getting from the FBI?

Ms. SALE. Very, very solid cooperation. When a case is presented and we need their support, especially in the instance of authorities that we can't exercise such as wiretap, they are very willing to grant them to us. It just slows us down obviously.

Mr. FISH. Ms. Sales, I think you said about one-fifth to one-fourth of the annual increase in applications for asylum is being adjudicated. So unchecked, the backlog of approximately a quarter million will only increase.

What do you need in the way of resources, asylum officers and adjudicators to tackle this problem? Do you want 500 new ones? Do you want 1,000 new ones? You must have thought about this.

Ms. SALE. We need two things, sir. We need, first of all, your affirmative support in a regulatory process that we have engaged in the deliberation of which will make it possible for us to make these adjudications with less time by reducing the administrative hurdles we go through to make a determination.

If the system doesn't change, in order to catch up with the backlog and deal with today's input, we are looking at probably 500 or 600 officers as distinct from the 150 that are there now. My expectation is that we need to do both things.

We need to change the system and then predicated on those changes, we need to change our resources.

Mr. FISH. I couldn't agree more. We need both efforts.

Mr. MAZZOLI. We continue to throw money into this. That won't solve it. When Ms. Reno came to see us on the 16th, she said immi-

gration is the most important problem I face as the Attorney General.

So I hope that you could carry a very gracious and respectful message from us to her that maybe when it comes to recycling money within the Justice Department, since there will be apparently no supplemental request, that the Immigration Service, knowing you are going to be a big component part of this, gets a good part of that.

I need to know something about this in absentia. You heard me talking about how much is being done under the authority of the 1990 act, if anything. Would that help you? Would that get some of the underbrush taken care of so when they are apprehended they could be more quickly exported?

Ms. SALE. We would be happy to provide that.

Mr. MAZZOLI. You are going to legislate when? You mentioned September, but I hope the legislation is soon.

Ms. SALE. This legislation I hope will be here before the end of July, sir, but I can't guarantee that because I—

Mr. MAZZOLI. Processing of the aliens, criminal aliens while they are still in incarceration to, again, speed the process along.

Mr. MCCOLLUM. On that subject, do you have any idea of the scope of the legislation you all are looking at trying to produce by the end of July?

Ms. SALE. The idea of exclusion.

Mr. MCCOLLUM. Is that the focus of it?

Ms. SALE. The focus is expedited exclusion, the enhanced criminal penalties that we have been discussing today and then we are engaged, as you know, because the affirmative asylum program is defined in regulation, a review and new regulations on the affirmative asylum program.

Mr. MAZZOLI. Thank you very much.

Thank you very much for your patience.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

Once again, let me apologize to our distinguished guests for this very, very lengthy day.

I apologize to everyone for the day, and I am still not sure that we won't have some interrupting votes. But I welcome Charles Pugh, Acting Administrator of the Wage and Hour Division, Department of Labor; Ms. Mary Ryan, the Assistant Secretary for Consular Affairs, Department of State; and Rear Adm. Richard Appelbaum the Chief of the Office of Law Enforcement and Defense Operations of the Coast Guard.

And, ladies and gentlemen, your testimony will be made a part of the record.

Mr. Pugh, we will get started with you, sir.

STATEMENT OF CHARLES E. PUGH, ACTING ADMINISTRATOR, WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Mr. PUGH. Thank you, Mr. Chairman.

We would like to thank you for the opportunity to appear here today before the subcommittee to discuss the Department of Labor's role in addressing organized criminal smuggling of aliens into the United States.

As you know, in light of the profound work force effects of our country's immigration policies, the Labor Department plays a significant role in administering and enforcing various aspects of our immigration laws. The Department believes that it can make an important contribution to, and intends to be actively involved in, this new governmentwide effort to eliminate deplorable practices found in the smuggling of human beings.

Before outlining the role that we expect to play in the administration's antismuggling initiative recently announced by the President, it may be useful to review in very general terms how the Department's activities affect the entry and employment of illegal migrants in the United States.

The Department is responsible for enforcing a variety of labor laws which protect workers in the United States without regard to their immigration or citizenship status. These important protections—which extend to people working in the United States, legally or illegally—include, among other laws: the Fair Labor Standards Act; the Migrant and Seasonal Agricultural Worker Protection Act; and the Occupational Safety and Health Act.

The Department strongly believes that effective labor standards and enforcement targeted to areas and industries where illegal migrants, as well as many new legal immigrants, are commonly employed is important. Labor standards enforcement could serve to reduce both the economic incentive for hiring unauthorized workers and the lure of work in the United States as a factor promoting illegal migration. This is one of the premises underlying our increasing emphasis on enforcement activities directed to the low-wage work force especially in such areas as the garment industry and agriculture.

As we explained at the subcommittee's recent hearing on employer sanctions, the Department and INS are currently implementing a new memorandum of understanding that we expect will establish better communication and coordination between our agencies so that our enforcement efforts become increasingly mutually reinforcing. Under the MOU we will expand selected joint investigations of employers suspected of violating both immigration and labor laws. The Department's investigators are given new authority to issue "warning notices" when they discover employment eligibility violations, while sanctions enforcement through civil fines and criminal prosecution continues to be INS' responsibility.

While we are fully cognizant of the care that must be taken to ensure that these cooperative efforts do not "chill" employees' willingness to come forward with complaints about violations of labor laws, we believe that improved cooperation under our MOU can enhance our ability to direct labor standards enforcement efforts to situations where illegal migrants are being exploited and their employment—along with that of legal immigrants and nonimmigrants—is serving to undermine wages and working conditions.

As you know, the President announced an initiative to combat the smuggling of human cargo into the United States by organized crime syndicates. The Labor Department contributed to the inter-agency group, chaired by the Domestic Policy Council and the National Security Council, that planned the initiative. In the context

of the major elements of that initiative, the Department's role is to review our labor law enforcement activities to deter the employment of illegal migrants criminally smuggled into the country.

We are currently formulating the details of how we will go about achieving this important goal. To this end, we have met with our colleagues in INS to get more information about the criminal smuggling operations they have uncovered. From these meetings, we have learned that the illegal migrants involved in the cases recently uncovered had not entered the work force when they were identified and apprehended. Rather, all of these cases involved situations where illegal migrants were being held in virtual bondage—without employment—until their smuggling fees were paid off, usually to be paid by relatives or prospective employers. Thus, our planning of special targeted labor standards enforcement efforts in support of the administration's antismuggling initiative will be based on any additional information we can develop about the areas and industries where these migrants ultimately are employed.

In this regard, we expect to build on enforcement initiatives that we have already underway for some time—targeted in particular to the garment industry, agriculture, and certain service and retail sectors where recent arrivals are commonly employed.

We will continue to work closely with INS. The Department believes the efforts to reduce the possibility of illegal migrants being exploited in our workplaces can help to alter the financial incentives that employers have to seek to hire undocumented workers.

Mr. Chairman, that concludes my prepared statement. And I will be pleased to answer any questions you and the subcommittee might have.

Mr. MAZZOLI. Mr. Pugh, thank you very much. Let me just say, certainly the Department of Labor will be a key element in this whole effort. And I will come back to that in some of the questions.

[The prepared statement of Mr. Pugh follows:]

STATEMENT OF
CHARLES E. PUGH
ACTING ADMINISTRATOR, WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES,
OF THE HOUSE JUDICIARY COMMITTEE

JUNE 30, 1993

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today before the Subcommittee to discuss the Department of Labor's role in addressing organized criminal smuggling of aliens into the U.S. As you know, in light of the profound workforce effects of our country's immigration policies, the Labor Department plays a significant role in administering and enforcing various aspects of our immigration law. The Department believes that it can make important contributions to, and intends to be actively involved in, this new government-wide effort to eliminate the deplorable practices found in the smuggling of human beings.

Before outlining the role we expect to play in the Administration's anti-smuggling initiative recently announced by the President, it may be useful to review in very general terms how the Department's activities affect the entry and employment of illegal migrants in the U.S.

Current Responsibilities

The Department is responsible for enforcing a variety of labor laws which protect workers in the United States without regard to their immigration or citizenship status. These

important protections -- which extend to people working in the U.S. legally or illegally -- include, among other laws:

- the Fair Labor Standards Act, which prescribes minimum wage, overtime pay, and child labor standards;
- the Migrant and Seasonal Agricultural Worker Protection Act, which requires covered farm labor contractors, agricultural employers, and agricultural associations to afford certain protections to migrant and seasonal agricultural workers; and,
- the Occupational Safety and Health Act, which regulates safety and health conditions in most employment.

The Department strongly believes that effective labor standards enforcement targeted to areas and industries where illegal migrants (as well as many new legal immigrants) are commonly employed is important. Labor standards enforcement could serve to reduce both the economic incentive for hiring unauthorized workers and the lure of work in the U.S. as a factor promoting illegal migration. This is one of the premises underlying our increasing emphasis on enforcement activities directed to the low-wage workforce, especially in such areas as the garment industry and agriculture.

Besides responsibilities just described, the Department assists the Immigration and Nationality Act with responsibility to assist the Immigration and Naturalization Service (INS) in enforcing the Act's "employer sanctions" provisions. The Department's principal responsibility in this regard is ensuring employers' compliance with their obligation to verify the

employment eligibility of the people they hire. We perform such inspection during the course of all our normal labor standards enforcement activities and refer information on the inspected employers to INS.

As we explained at the Subcommittee's recent hearing on employer sanctions, the Department and INS are currently implementing a new Memorandum of Understanding (MOU) that we expect will establish better communication and coordination between our agencies so that our enforcement efforts become increasingly mutually reinforcing. Under the MOU, we will expand selected joint investigations of employers suspected of violating both immigration and labor laws. The Department's investigators also are given new authority to issue "warning notices" when they discover employment eligibility verification violations, while sanctions enforcement through civil fines and criminal prosecution continues to be INS responsibility.

While we are fully cognizant of the care that must be taken to ensure that cooperative efforts do not "chill" employees' willingness to come forward with complaints about violations of our labor laws, we believe that improved cooperation under our MOU can enhance our ability to direct labor standards enforcement efforts to situations where illegal migrants are being exploited and their employment -- along with that of some legal immigrants and nonimmigrants -- is serving to undermine wages and working conditions. Where this occurs, our enforcement activities can improve the wages and working conditions of U.S. workers by

reducing the economic incentives that lead many employers to hire and exploit illegal migrants, thereby adversely affect U.S. workers. In this regard, our employer sanctions role focuses on assuring compliance with what effectively constitutes, and needs to be seen as, an employment standard.

Anti-smuggling Initiative

As you know, the President announced an initiative to combat the smuggling of human cargo into the U.S. by organized crime syndicates. The Labor Department contributed to the interagency group, chaired by the Domestic Policy Council and National Security Council, that planned the initiative. In the context of the major elements of the initiative, our role is to review our labor law enforcement activities to deter the employment of illegal migrants criminally smuggled into the country.

We are currently formulating the details of how we will go about achieving this important goal. To this end, we have met with our colleagues in INS to get more information about the criminal smuggling operations they have uncovered. From these meetings, we have learned that the illegal migrants involved in the cases recently uncovered had not entered the workforce when they were identified or apprehended. Rather, all of these cases involved situations where illegal migrants were being held in virtual bondage -- without employment -- until their smuggling fees were paid off, usually to be paid by relatives or prospective employers. Thus, our planning of special targeted labor standards enforcement efforts in support of the

Administration's anti-smuggling initiative will be based on any additional information we can develop about the areas and industries where these migrants ultimately are employed.

In this regard, we expect to build on enforcement initiatives that we have had underway for some time -- targeted in particular to the garment industry, agriculture, and certain service and retail sectors where recent arrivals are commonly employed. We will continue to work closely with the INS to identify other specific areas in which concentrated labor law enforcement can affect the end of criminal smuggling pipelines.

We do not, however, underestimate the difficulty of this challenge, especially in light of the likelihood that many of the illegal migrants smuggled into the country become employed in the underground economy or in businesses which are not covered under the Nation's labor laws. Nonetheless, we believe that directed labor standards enforcement is an essential component of an overall national strategy which seeks to change the dynamics of an increasingly serious but long-standing problem.

Conclusion

The Department of Labor believes that efforts to reduce the possibility of illegal migrants being exploited in our work places can help to alter the financial incentives for employers to seek undocumented workers. In so doing, these efforts can help to reduce the flow of illegal migrants whose desire to come to the U.S. provides the "market" for deplorable criminal smuggling activities. To the extent this occurs, we not only can assure

more humane treatment for the cruelly exploited migrants but also can assert more control over our borders.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you and the Subcommittee might have.

Mr. MAZZOLI. Ms. Ryan, nice to see you. We talked yesterday, or the day before, I guess; right?

Ms. RYAN. Yes, Mr. Chairman. Thank you very much.

Mr. MAZZOLI. Congratulations to you on your new assignment, and we wish you every good fortune.

Ms. RYAN. Thank you, sir.

I have a prepared statement which I would like to introduce for the record. And I have a few remarks, if that is all right with you.

Mr. MAZZOLI. Without objection, it will be a part of the record.

STATEMENT OF MARY A. RYAN, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE

Ms. RYAN. Mr. Chairman, it is a pleasure to appear before this subcommittee today to present the Department of State's perspective on the very difficult challenges posed by the illicit movements of people across international borders.

Although the Department of State is not a law enforcement agency, our responsibility for administering major portions of the U.S. immigration law and our responsibility for the integrity of U.S. visas and passports—where, by the way, our Bureau of Diplomatic Security does have a law enforcement role—have kept us in the fight against alien smuggling and the related use of fraudulent travel documents for many years.

The criminal infrastructure used for alien smuggling is readily shared by other illicit activities including narcotics trafficking and terrorism in which the Department of State also has international responsibilities.

Because Foreign Service officers are distributed widely throughout the world, they are the eyes, ears, and voice of the U.S. Government overseas on alien smuggling matters. Before the recent phenomenon of high volume, high visibility shipments of aliens by organized crime syndicates, there was constant pressure on our border by smuggling organizations. Indeed, even now, more aliens attempt to enter in small groups by land, air, and sea than in the kind of mass movement that has attracted public attention recently.

Our officers continue to work with other United States and foreign agencies to try to stem this flow. The new dimensions assumed by alien smuggling have added a broader diplomatic aspect to our efforts. The Department has delivered demarches and is currently preparing and instructing our post to deliver a series of demarches to illegal alien source countries, countries whose citizens facilitate smuggling, and transit countries, requesting their cooperation and assistance and, where appropriate, reminding them of their responsibilities under international law.

As recent cases have demonstrated, we need international cooperation to prevent embarkation of aliens. If that is possible, to interdict them when under way, to divert them to sites outside our borders where they may be retained, and to repatriate them where appropriate.

We are also mindful that the Department of State has international responsibilities in the areas of refugees and human rights as well. We must ensure that those with legitimate refugee claims

have a chance to be heard; and those who are repatriated are not mistreated for their attempted flight.

Ambassador Warren Zimmerman, Director of the Department's Bureau of Refugee Programs, met last week with the United Nations High Commissioner for Refugees and with the International Organization for Migration in Geneva to brief them on the President's plan of action and to seek their cooperation.

The Department of State is planning to designate a coordinator for alien smuggling in the new Bureau of International Crime, Counterterrorism, and International Narcotics Matters, someone who is one of our most distinguished senior officers.

The Department of State participates in the border security working group and other interagency programs involved in maintaining the integrity of our borders. The Office of Fraud Prevention Programs in the Bureau of Consular Affairs is specifically tasked with devising and implementing ways to combat visa and passport fraud and the use of fraudulent travel documents, which are intimately related to alien smuggling.

The Department is also investing heavily in new technology to ensure the security and integrity of our visas and passports. The machine-readable visa has proven to be successful. We are expanding the number of posts issuing machine-readable visas; and we have an ongoing project to upgrade the visa security features. We are also studying ways to make the machine-readable passport more tamper resistant.

The Department of State fully supports the President's plan to combat alien smuggling. It is a responsibility that merits the highest priority.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you, Ms. Ryan.

[The prepared statement of Ms. Ryan follows:]

Testimony of
Mary A. Ryan,
Assistant Secretary of State,
Bureau of Consular Affairs
before the
Judiciary Subcommittee on
International Law, Immigration
and Refugees

June 30, 1993
Rayburn Building
10:00 AM

Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

It is a pleasure to appear before this subcommittee today to present the Department of State's perspective on the very difficult challenges posed by the illicit movement of people across international borders. Illegal migration and alien smuggling are complex issues made even more difficult by the involvement of organized alien smuggling rings which bring their clients by land, sea and air from many countries.

Alien smuggling is a growing international criminal activity. This, and the fraudulent travel document industry integrally related to it, are high-profit, low-risk businesses. The Department of State has been in the fight against alien smuggling and the related use of fraudulent travel documents for many years.

Let me describe some aspects of the problem, and what the State Department has been doing about it.

Alien smuggling has adverse effects on both the countries used for transit, and destination countries like the U.S.

Smugglers, often affiliated with organized crime syndicates, regularly charge aliens thousands of dollars each for a chance to get to the U.S. Some of the revenues are used to bribe foreign officials to facilitate their movement. The infrastructure needed for this enterprise - e.g. false documents, corrupt foreign officials, clandestine routes - can be, and sometimes is, readily shared by other criminal activities such as narcotics smuggling and terrorism.

Asylum abuse compounds the problem as alien smugglers instruct those who enter through smuggling operation to make asylum claims that are without foundation. Many claimants do not even appear for their asylum hearings. AS you know, we have been directed by the President to address this issue of asylum abuse at ports of entry while honoring our commitments to bonafide refugees. We are confident that we can accomplish both goals.

The Department has been combatting the use of fraudulent travel documents and alien smuggling for many years. We have always considered this to be an issue of the highest national priority. Even before the latest boat smuggling incidents, the Department was stepping up its efforts to address this issue.

The Department has designated Mr. Robert Perito to be Coordinator for Alien Smuggling in the proposed new Bureau of International Crime, Counterterrorism and International Narcotics Matters.

We participate in the Border Security Working Group and other programs involved in maintaining the integrity of our borders. We contributed to the formulation of proposed legislation which is designed to deter alien smuggling and illegal migration and enhance the effectiveness of our law enforcement assets.

Our Office of Fraud Prevention Programs is specifically tasked with devising and implementing strategies and programs to combat all aspects of consular fraud. This includes visa and passport fraud, the use of fraudulent travel documents and alien smuggling.

This office, which works closely with other offices in the Department, INS and other U.S. agencies, is also involved in collecting, analyzing and disseminating intelligence on alien smuggling organizations, smuggling routes, practices and schemes. It has recently issued new guidelines to all our Embassies and Consulates on reporting alien smuggling activities. It also maintains liaison with foreign governments that share our immigration concerns.

The Office of Fraud Prevention Programs develops and provides anti-fraud training for passport examiners, consular officers and our national employees, representatives of other federal or local agencies, such as INS, foreign immigration or law enforcement officials and airline personnel.

The Department is working closely with foreign governments to gain their cooperation and develop strategies for combatting fraud and alien smuggling. We stress training airline and foreign immigration officials in the detection of fraudulent documents as part of our pro-active, anti-fraud strategy.

Our overseas posts, and our consular officers, are the first line of defense in the fight against alien smuggling. They are already involved in obtaining information on alien smuggling activities. Information obtained by our posts has led to the break up of many smuggling operations.

Foreign Service posts are the eyes, ears and voice of the U.S. government overseas. They obtain the cooperation of, and maintain liaison with, local officials. They train local airline and immigration personnel, express our concerns to host governments and advise local officials on fraudulent documents and malafide travellers.

Document counterfeiters and criminal smuggling organizations constantly attempt to compromise the integrity of the U.S. passport, U.S. visa and the passport and visa issuance processes. The same organizations that smuggle people via ship, also smuggle people via air using fraudulent travel documents. The mode of transportation may vary, but the principals remain the same. Indeed, although maritime smuggling has garnered recent headlines, many more people are smuggled to the U.S. via commercial air carrier than by ship or boat. Fraudulent travel documents play a major part in this method of smuggling.

Genuine and counterfeit documents are valued commodities for alien trafficking, resulting in persistent attempts to counterfeit U.S. travel documents. The availability of advanced printing technology makes fraudulent documents of all types more difficult for consular and immigration officers to detect.

The Department is investing heavily in new technology to ensure the security and integrity of our visas and passports, and the visa and passport issuing processes. The Machine Readable Visa (MRV) has proved to be successful. As far as we are aware, there have been no instances of illegal entry to the U.S. using the MRV. However, the counterfeits are getting better.

We are expanding the number of posts issuing MRV's, and we have an ongoing project to upgrade the visa security features. We are also studying ways of making the Machine Readable Passport more tamper resistant.

The Department has delivered demarches and is currently preparing and instructing our posts to deliver a series of demarches to illegal alien source countries, countries whose citizens facilitate alien smuggling, and transit countries, requesting their cooperation and assistance, and where appropriate, reminding them of their responsibilities under international law. In the case of smuggling by sea, this includes flag state and Safety of Life at Sea (SOLAS) responsibilities.

Ambassador Warren Zimmerman, Director of the Department's Bureau of Refugee Programs, met last week with the United Nations High Commissioner for Refugees and with the International Organization for Migration in Geneva to brief them on the President's plan of action and to seek their cooperation.

President Clinton described alien smuggling as a "shameful practice of unspeakable degradation and exploitation." The Department fully supports the President's plan to combat alien smuggling. We are working with Congress to address this issue, and we will continue to address it by improving interagency coordination and seeking greater cooperation from other governments and transport companies.

Thank you.

Mr. MAZZOLI. Just a couple of quick questions; and we appreciate, first of all, your professionalism and your help.

Mr. Pugh, is there evidence that there is any collusion or complicity with the employers and the snakeheads, or the people who are bringing these Chinese in? Or are employers just eventually finding hard-working people showing up at their door to take the jobs?

Mr. PUGH. From what we have seen and the information that is available to us through our regional offices and district offices that do the investigation, what we are finding is that while there might not be any direct evidence of collusion, it is employer greed, of wanting to get cheap labor and not really caring in many cases what that source is.

Mr. MAZZOLI. So they are all part of the scam at one stage or another, are they not?

Mr. PUGH. That is correct.

Mr. MAZZOLI. At which case, of course, to the extent—and I am not sure how you do it—to the extent you and the FBI and the others can target employers who have employed these people, the case may not be an easy one to make; but it does seem to me they should be on the hit list pretty carefully from now on, because they seem to have shown their mala fides by the fact they have taken these people aboard.

Anyway, I salute you because it is very important. And I am only now trying to master the relationship you have with the Immigration Service in employer sanctions work. But you may have heard me this morning saying this bewildering array of documentation which serious-minded and law-abiding employers are faced with is sometimes more than they can handle.

So we hope that, pending the question of an identifier, we can get down to some manageable number of documents. So we may ask your help on what your investigators most often see to be the false documents and the kind of problems they see, not with these scam operators but with good companies that just get caught up in this thing trying to do the right thing.

Admiral Appelbaum, are you all able to identify ships coming in? You have some idea of what is coming down, so to speak, concerning these Chinese or any other illegally smuggled groups of people?

STATEMENT OF REAR ADM. RICHARD APPELBAUM, CHIEF, OFFICE OF LAW ENFORCEMENT AND DEFENSE OPERATIONS, COAST GUARD

Admiral APPELBAUM. Mr. Chairman, the sharing of intelligence, has significantly improved in recent years and particularly in recent months.

As we focus on the problem from the PRC, the intelligence community has been of great assistance in enabling us to marshal our limited resources toward managing that particular problem.

Mr. MAZZOLI. Do you find you were able to share before the task force that the President announced on June the 18th? And since that time is there any greater facility in the sharing and collegiality in its use?

Admiral APPELBAUM. Collegiality and sharing has not been a problem. The priority of focusing on the subject of alien migration

has been elevated. And to the extent that provides us with greater access to information, it is a significant improvement.

Mr. MAZZOLI. Of course, you all are stretched pretty thin because you have to worry about the Windward Passage and all the way now, I guess, up the coast, both coasts; and so it is pretty tough.

Admiral APPELBAUM. Mr. Chairman, we are not focusing exclusively on the PRC problem. We are also very heavily engaged, as we speak, in the problem in and around Haiti and the Windward Pass and that particular operating area. We have a massive operation in place there, and it has been there for some time.

Mr. MAZZOLI. Drugs and everything?

Admiral APPELBAUM. Operation Able Manner. And we are also concerned about the Dominican Republic and Cuba.

Mr. MAZZOLI. Ms. Ryan, I don't know whether it is really in your shop or not, but you heard our discussion earlier about the PRC and the one-child policy and the coerced abortions and the family planning and so forth.

Have you anything to offer as to whether or not that program is still being ardently enforced throughout China?

Is it something that is just done in the Fukien Province or something done along the coast because those are the people more apt to leave?

I am just curious if you have a response of any sort to that.

Ms. RYAN. I am not the expert on this, Mr. Chairman. The little that I do know is that in the Province of Fukien, where most of these people have come from recently, that policy of almost punitive population control—if I may use that term—is perhaps less widely used than in other parts of China.

Mr. MAZZOLI. In effect, that is why I asked the question. That was my understanding from general reading. So that, in a way, it reduces the strength that maybe the INS or the weight that the INS is giving to that thing in its adjudications.

I think that whoever put that together, whether it is Mr. Rees or his people, I think are just putting an unnecessary amount of emphasis on it. And I think they don't really have to. I think they could,, within their own shop, stop that and stop it much more quickly. Their idea is to enforce it on the single man, and they know that is ridiculous. And the final order, which has been pending since January, would abolish it anyway.

They should just take judicial notice of what is coming up in that way and ignore it with the people in the field. So I am really very disappointed in what I have heard today with respect to that, and your testimony bolsters that.

Well, having said that, and the second bells have rung, I will have to leave. I thank you all very much. I will tell our last panel, Mr. Der, Ms. Lee, and Mr. Mark, if you have patience, I will be back; if not, if you don't show up then, I can understand it. And we will absolve you of any guilt. Thank you.

Ms. RYAN. Thank you, Mr. Chairman.

Mr. PUGH. Thank you, Mr. Chairman.

Admiral APPELBAUM. Thank you, Mr. Chairman.

[The prepared statement of Admiral Appelbaum follows:]

Department of Transportation
Statement of Rear Admiral Richard A. Appelbaum
Chief, Office of Law Enforcement and Defense Operations
U. S. Coast Guard
on Alien Smuggling
Before the
Subcommittee on Immigration
Judiciary Committee
U.S. House of Representatives
June 30 1993

Good morning, Mr. Chairman and distinguished members of the Subcommittee. It is a pleasure to appear before you today to represent the Commandant, Admiral J. William Kime, and discuss the Coast Guard's migrant interdiction program, and our efforts in alien smuggling cases.

The Coast Guard is our nation's primary Federal maritime law enforcement agency. Coast Guard alien interdiction operations are a result of the Presidential Proclamation of September 29, 1981, which suspended the entry of undocumented aliens into the United States by the sea, and Executive Order 12807 of May 24, 1992, which authorized the Coast Guard to directly repatriate undocumented aliens intercepted on the high seas to their point of origin or another country. The Executive Order also tasked the Coast Guard with enforcing the suspended entry of undocumented aliens by sea by interdicting "defined" vessels carrying undocumented aliens. Defined vessels include U.S. registered, stateless, and those of nations with which the United States has special arrangements to take such actions.

In enforcing the Executive Order, the Coast Guard stops and boards "defined vessels" when there is reason to believe such vessels are engaged in the transportation of undocumented aliens. Vessel and passengers are returned to their point of origin when there is reason to believe there has been a violation of either United States or foreign immigration laws.

Alien migration interdiction is a humanitarian effort as well as a law enforcement operation, and is sometimes a difficult mission for our people to carry out. The sailors on our cutters who assist the undocumented aliens often face psychological and emotional difficulties knowing that it is their duty to uphold U.S. law, while at the same time wanting to assist the less fortunate.

Since 1981, the Coast Guard has interdicted over 80,200 undocumented aliens. The vast majority, over 55,900, have been Haitian; however, recent trends have shown a dramatic increase in undocumented aliens from the Peoples Republic of China, Dominican Republic, and Cuba.

Currently, Haiti is the only nation with whom the U.S. has a standing migrant interdiction agreement. The Haitian interdiction agreement, which was signed on September 23, 1981, allows the Coast Guard to conduct boardings and inquiries of Haitian flagged vessels on the high seas when U.S. authorities have reason to believe the vessel may be involved in the

irregular carriage of passengers outbound from Haiti. To date, the coup of 1991 has not had an effect on the bilateral agreement. The agreement confers consent by the Government of Haiti to detain the vessel and passengers, pending their return to Haiti. In accordance with a directive from the President, the Coast Guard and the State Department have implemented a range of measures designed to provide meaningful and safe alternatives to boat departures for bona fide refugees.

Operation ABLE MANNER, the Coast Guard's operation to deter illegal migrants from taking to sea from Haiti in unseaworthy vessels, has been very effective in stemming the flow of illegal Haitian migrants. The success of ABLE MANNER is attributed to a large presence of U.S. Coast Guard and U.S. Navy vessels offshore. At its peak, the Coast Guard had 17 cutters and 13 aircraft deployed while the U.S. Navy had 5 ships and 6 aircraft deployed to ABLE MANNER. The President's continuance of Executive Order 12807 of May 24, 1992 was a critical factor in preventing the outflow of economic migrants. These two factors saved the lives of Haitians who would have perished at sea had they not been deterred from going to sea in typically unseaworthy vessels. The Supreme Court recently upheld the legality of Presidential Executive Order 12807 to directly repatriate undocumented aliens. The action by the Supreme Court has added strength to a policy that has prevented human tragedy by averting a large boat exodus. Since ABLE MANNER began to the best of our knowledge, there have been no lives lost at sea resulting from undocumented Haitian aliens taking to sea in unseaworthy boats.

When dealing with countries with which the United States does not have a standing agreement, the United States enters into ad hoc agreements to facilitate repatriation of undocumented aliens.

The United States' greatest new potential illegal migration risk lies with economic migrants from the Peoples Republic of China (PRC). Currently, the United States and the PRC do not have a standing migrant interdiction agreement. The distance separating the United States from the PRC, compounded by the absence of obvious choke points or obvious navigational way points to patrol, presents a significant interdiction problem for the Coast Guard. Vessels carrying undocumented Chinese from China and other Asian ports transit many different routes to reach the United States. Many transit directly across the Pacific Ocean to either Hawaii or the West Coast of the United States, some transit the Pacific Ocean to Central and South America countries where the undocumented aliens begin a land journey to the United States, and others transit the Indian Ocean around South Africa to the Atlantic Ocean to either Caribbean or U.S. ports. The vessels carrying the undocumented aliens are not configured to carry passengers and are unsafe, overcrowded, and unhealthy. An example of this is the recent tragedy off of Long Island, in which seven undocumented Chinese aliens drowned after their vessel, the Golden Dragon, ran aground. The conditions on board the Golden Dragon were deplorable - food and potable water

were not available in acceptable quantities, and unhealthy sanitary conditions made the vessel a hazard to humans. Additionally, there is evidence that Chinese organized criminal activities are behind the PRC smuggling activities.

The number of undocumented aliens attempting to enter the United States from the Dominican Republic is increasing as well. The United States does not have a migrant interdiction agreement with the Dominican Republic. In the past two years, there have been increasing numbers of undocumented aliens from the Dominican Republic attempting to cross the Mona Passage to reach Puerto Rico. Coast Guard cutters and aircraft operating in this area routinely encounter small Dominican vessels which are often unseaworthy and overloaded with undocumented aliens. The Coast Guard has made ad hoc agreements with the Dominican Republic for repatriation of these aliens. To date, the Dominican Republic has been responsive in arranging for prompt return of those undocumented aliens.

The number of Cubans reaching or attempting to reach Florida by sea has dramatically increased over the past ten years. When we interdict Cubans enroute to the United States, our procedure is to deliver them to an appropriate United States port and turn them over to the INS for further processing. This calendar year we have picked up 272 Cubans to date. This is more than the number of Cubans intercepted at sea in the same period last year. Each year, since 1981, the number of Cubans intercepted has grown

significantly. This increase in migration is generally attributed to the deteriorating conditions in Cuba. We are able to intercept a large percentage of these migrants due to the close proximity of Cuba to Florida. Cubans attempt the trip in boats ranging in size from small fishing boats to state owned tug boats. Additionally, many others attempt the perilous transit on rafts, inner tubes, and other makeshift conveyances. The individuals making such transits are at the mercy of the wind and sea currents, which are particularly strong in the Straits of Florida. Many of these people suffer from dehydration, exposure, and shark attack. Considering the physical state of many of the Cubans we intercept, it is likely that many others perish in their attempts to reach the United States.

As I stated before, the Coast Guard alien interdiction operation is very much a humanitarian as well as a law enforcement mission. Undocumented aliens take great risks and endure significant hardships in their attempts to reach the United States. In most cases, vessels interdicted at sea with undocumented aliens are overloaded, unseaworthy, lacking basic safety equipment, and operated by inexperienced sailors. The vessels invariably lack sufficient food and water. These realities underscore the necessity of approaching alien interdiction as a potential search and rescue case first, leaving the issue of status and disposition of passengers to be resolved later.

The Coast Guard will continue to interdict undocumented aliens of all nationalities who attempt to pass illegally into the United States by sea. Each person is treated with proper respect and care. The safety of everyone involved in the high seas operation is always of great concern to the Coast Guard.

Thank you Mr. Chairman. I would be happy to answer any questions.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

We will call our last and most patient panel of all, Mr. Henry Der, the Director of the Chinese for Affirmative Action Group of San Francisco, CA; Ms. Yvonne Y. Lee, national executive director of the Chinese American Citizens Alliance, also of San Francisco; Mr. Stanley Mark the program director, Asian American Legal Defense and Education Fund, New York, NY.

I understand Mr. Der has a plane to catch, and we will be happy to hear your statement; and we will try to get your questions and you can be on your way.

Mr. Der, I might say all the statements will be made a part of the record.

STATEMENT OF HENRY DER, DIRECTOR, CHINESE FOR AFFIRMATIVE ACTION, SAN FRANCISCO, CA

Mr. DER. Thank you very much, Mr. Chairman. I have my comments submitted to the record.

The smuggling of these undocumented Chinese persons is an organized crime problem and not an immigration problem. Our law enforcement officials need to do a more effective job of coordinating their enforcement activities to apprehend these criminals.

And as the U.S. Congress and the President seek solutions to suppress this criminality, policymakers must not act precipitously to fan public fears about our Nation's political asylum procedures and the backlog of political asylum cases.

There has been considerable press attention about the backlog of 215,000 or so political asylum petitions. Many citizens in our country have come mistakenly to believe that these petitioners are largely undocumented and Chinese when in fact Chinese persons constitute roughly 5 percent of all current political asylum petitioners.

It is, in fact, administrative inefficiency and the mishandling by the previous Presidential administration of Salvadoran and Guatemalan petitioners that have exacerbated this backlog.

INS and other officials have stated publicly that the undocumented Chinese aliens apprehended recently aboard these ships will be detained so as to make an example out of this illegal smuggling. INS should not detain undocumented Chinese persons on a discriminatory basis. Existing INS prescreening standards used to assess the credibility of a political asylum claim should be applied toward those undocumented Chinese persons who seek parole while waiting judgment on their political asylum petition.

Current regulations already provide that INS must deny parole to a petitioner who has been convicted of a serious crime or is a danger to the community or to national security. INS should not treat these undocumented Chinese persons any differently than any other group of petitioners.

By the same token, the President should take steps to repeal the enhanced consideration provision of Executive Order 12711, which treats China's one-child, one-family policy as being violative of human rights, thereby, giving Chinese petitioners an advantage not enjoyed by other petitioners in the political asylum process.

INS officials have administered this enhanced provision of Executive Order 12711 in such a manner so as to invite abuses of the political asylum process, not requested by prodemocracy activists concerned about the human rights condition in China. This enhanced consideration provision was motivated by the former Presidential administration's efforts to placate their political supporters here in America.

The U.S. Congress, the President, and INS officials should grant political asylum on the ability of a petitioner to establish a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion as supported in the U.N. treaty and also in our own National Refugee Act.

In closing, as this Congress considers reform and changes in the political asylum procedures, my written document cites five basic principles that I hope you will abide by. Most importantly whatever you do, due process should not be compromised. Every single petitioner should have access to legal counsel as he finds his way through this process.

[The prepared statement of Mr. Der follows:]



CHINESE FOR
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Testimony
of
Henry Der, Executive Director
Chinese for Affirmative Action
before
House Subcommittee on International Law, Immigration, and Refugees
U.S. House of Representatives
June 30, 1993
Washington, D.C.

Chairman Mazzoli and members of the House Subcommittee on International Law, Immigration, and Refugees, I am Henry Der, executive director of Chinese for Affirmative Action, a voluntary membership-supported organization dedicated to promote equality and justice for Chinese Americans. Founded in 1969, Chinese for Affirmative Action has supported immigration reform to promote family reunification and, with the cooperation of educators and community representatives, has worked to encourage many community members to become naturalized citizens and full participants in the democratic process. Chinese for Affirmative Action has also consistently advocated the non-discriminatory treatment of Chinese petitioners before the Immigration and Naturalization Services.

I welcome this opportunity to testify before this House Subcommittee as you investigate the smuggling of undocumented aliens into the United States.

In the last six months, news reports about the smuggling of undocumented Chinese persons by organized crime have unleashed public doubts about the effectiveness of our nation's immigration laws as they relate to undocumented aliens and have triggered presidential, law enforcement, and congressional proposals to strengthen anti-smuggling laws and penalties and to restrict the political asylum application process. Some groups have even called for a reduction in legal immigration to our country.

Without a doubt, this smuggling of undocumented Chinese persons by organized crime has surfaced a range of mixed emotions and fears within the Chinese American community. Many Chinese Americans oppose the exploitation by the smugglers in enticing Chinese persons to pay exorbitant prices to board these ships, subjecting them to inhumane, unsafe conditions on these boats for

periods as long as four to five months, and then assigning them to exploitative work situations on American soil. But for the criminality of this smuggling and undocumented entry into the United States, other Chinese Americans recognize why these undocumented persons may want to come to America to seek a better life, similar to the motivation that has historically driven millions of persons around the world to settle in our country.

The calls for reform in the political asylum process have misled many Chinese American citizens to believe that, if these undocumented Chinese aliens are granted political asylum, the annual quota for legal Chinese immigration will be reduced. Fearing a greater backlash against Chinese persons, some community members have fallen into a trap of supporting deportation of these undocumented persons without a hearing.

The U.S. Congress, the executive branch, and all American citizens should be careful not to overreact to this series of smuggling incidents and support legislation and administrative procedures that would undermine the basic principles of granting asylum to victims of political and religious persecution. Notwithstanding Pai Sheng's dramatic landing of its human cargo at the foot of the Golden Gate Bridge and the tragic drowning of 10 Chinese aliens who jumped off the Golden Venture near Rockaway Beach in New York, the number of undocumented Chinese persons who have boarded these ships engaged in smuggling pales in comparison to the thousands of undocumented aliens who daily cross our nation's northern and southern borders.

The smuggling of these undocumented Chinese persons is an organized crime problem, not an immigration problem. For the past decade and through congressional hearings, law enforcement officials have talked about and the U.S. Congress has been briefed about the extent of criminal activities perpetrated by organized crime syndicates in Asia. Our law enforcement officials need to do a more effective job of coordinating their enforcement activities to apprehend these criminals.

As the U.S. Congress and the President seek solutions to suppress this criminality, policymakers must not act precipitously to fan public fears about our nation's political asylum procedures and the backlog of political asylum cases. There has been considerable press attention about the backlog of 215,772 political asylum petitions. Many citizens have come mistakenly to believe that these petitioners are largely undocumented and Chinese. Chinese persons constitute roughly 5% of all current political asylum petitioners. Administrative inefficiency and the mishandling by the previous administration of Salvadoran and Guatemalan petitioners have exacerbated the backlog, not any increase in the number of undocumented Chinese persons seeking political asylum in an exclusion or deportation proceeding.

INS and other officials have stated publicly that the undocumented Chinese aliens, apprehended recently board these ships, will be detained so as to make "an example" out of this illegal smuggling. The INS should not detain undocumented Chinese persons on a discriminatory basis. Existing INS pre-screening standards, used to assess the credibility of a political asylum claim, should be applied toward those undocumented Chinese persons who seek parole while waiting judgment on their political asylum petition. Current regulations already provide that INS must deny parole to a petitioner who has been convicted of a serious crime or is a danger to the community or national security. The INS should not treat these undocumented Chinese persons any differently than any other group of petitioners.

By the same token, the President should take steps to repeal the "enhanced consideration" provision of Executive Order 12711 which treats China's one child-one family policy as being violative of human rights, thereby giving Chinese petitioners an advantage, not enjoyed by other petitioners, in the political asylum process. INS officials have administered this "enhanced provision" of Executive Order 12711 in such a manner so as to invite abuses of the political asylum process. Not requested by pro-democracy activists concerned about the human rights conditions in China, this "enhanced consideration" provision was motivated by the former presidential administration's efforts to placate their political supporters in America. The U.S. Congress, the President, and INS officials should grant political asylum on the ability of a petitioner to establish a "well-founded fear of persecution" based on race, religion, nationality, membership in a particular social group, or political opinion, as embodied in the 1950 UN Convention and the 1980 US Refugee Act.

As the U.S. Congress considers legislation to amend the political asylum procedures and standards, every effort must be made to maintain the following principles:

1. standard of proof should be based on "well-founded fear," not "most likely" or "clear probability"
2. full review of petition on the record
3. adequate training of asylum officers
4. access to counsel by all petitioners
5. full and informed notice to all petitioners of their rights under the law

Chinese for Affirmative Action opposes legislative proposals that, if enacted, would diminish the due process rights of political asylum petitioners. Specifically, we oppose any provision that would allow an asylum officer to make an immediate decision on an asylum claim without any review or appeal. We support all efforts to expedite the handling of political asylum petitioners, provided that due process rights are not diminished in the process.

Chinese for Affirmative Action supports most of President Clinton June 18, 1993 initiatives to stem smuggling and exploitation by organized crime. The Department of Justice should increase its investigative efforts and actively review prosecution strategies to combat alien smuggling, and consistent with due process and existing laws, expedite adjudication of entry claims raised by migrants who are victims of organized crime. The State Department should work with source nations to establish rigorous, effective policies to suppress the operation of criminally-sponsored alien smuggling in their country, pressure flag nations to not register vessels used by smugglers, and insist on tougher flagging standards. The Labor Department should more effectively enforce labor laws to deter organized crime's exploitation of undocumented Chinese persons in the workplace. The U.S. intelligence community should vastly improve its ability to collect information and intelligence about organized crime syndicates and gather sufficient evidence to secure convictions. Lastly, the U.S. Congress should include alien smuggling as a predicate offense in the Racketeer Influenced and Corrupt Organizations (RICO) statute.

I have enclosed for the Subcommittee's information a copy of Chinese for Affirmative Action's June 15, 1993 board-adopted resolution on this matter of smuggling of undocumented persons.

Thank you for the opportunity to present our views in this matter.



CHINESE FOR
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CAA Board of Trustees Resolution
Smuggling of Undocumented Chinese Aliens
Adopted on June 15, 1993
San Francisco, California 94108
(415) 274-6750

Whereas the recent smuggling of undocumented Chinese aliens has stirred fears of backlash against legal Chinese immigration to the United States and of indiscriminate INS harassment against Chinese persons about their immigration status, and

Whereas the numbers of undocumented Chinese aliens in the United States remain relatively low, compared to the numbers of undocumented aliens from other countries, and

Whereas some news reports have stereotypically sensationalized the socio-economic impact of undocumented Chinese aliens on American society, and

Whereas these undocumented Chinese aliens have had to endure deplorable, life threatening conditions on cargo ships coming to the United States, and

Whereas the overwhelming majority of Chinese Americans are law-abiding citizens and have little, if any, knowledge about the individuals or groups responsible for the smuggling of undocumented Chinese aliens into the United States, and

Whereas accusations of Chinese community complicity with illegal smuggling have created a resurgent fear of a "Yellow Peril," afflicting harm on the American populace, and

Whereas some undocumented Chinese aliens who successfully enter the United States are subjected to cruel exploitation and danger, usually by criminal elements in the Chinese community, and

Whereas such exploitation of undocumented Chinese aliens is illegal and harmful to the welfare of the entire Chinese community, and

Whereas President George Bush's Executive Order 12711 to provide "enhanced consideration" of political asylum petitions based on China's one child-one family policy as being violative of human rights has misdirected the meaning of political persecution, and

Whereas political asylum should be granted to individuals who have experienced or have a well-founded fear of political persecution, and

Whereas some federal legislators seek to diminish the due process rights of political asylum petitioners, for example, by summarily excluding them from the United States if they bear no documents when they enter the country,

Now, therefore be it resolved that the CAA Board of Trustees deplores the exploitation of undocumented Chinese aliens by organized criminal elements and any other individuals or groups who illegally bring Chinese persons into the United States, and

Further be it resolved that the CAA Board of Trustees supports prosecution, to the full extent of the law, against all individuals responsible for smuggling undocumented aliens into the United States for profit, and

Further be it resolved that the CAA Board of Trustees urges the INS to respect the constitutional rights of all Chinese persons in the United States and the U.S. Congress not to enact any legislation that would diminish the due process rights of undocumented Chinese aliens, and

Moreover be it resolved that the CAA Board of Trustees calls on President Clinton, U.S. Attorney General Janet Reno, and the INS not to detain undocumented Chinese aliens on a discriminatory basis, especially if there is no evidence of flight risk, and to adjudicate political asylum petitions on a fair, objective and timely manner, and

Lastly be it resolved that the CAA Board of Trustees calls on President Clinton to repeal the "enhanced consideration" provision of former President Bush's executive order which treats China's one child-one family policy as violative of human rights.

Mr. MAZZOLI. Thank very much, Mr. Der. With the permission of your colleagues, I will ask my questions so you can be out to the airport.

You might have been here this morning when Ms. Pelosi testified and she had somewhat the same theories as you. She had three points against which anything we do should be measured and you have five, but they are pretty much in the same area, so I can assure you that for my part, and I am sure that for all of our parts, we will be as careful as we possibly can to acknowledge your points. What I think has driven this subcommittee for all of these years, and that is to be very sensitive and compassionate and certainly fully protective of due process of all the people.

I don't know if you were here with the exchange I had with several witnesses today concerning the Executive order and the way apparently Mr. Rees and his people have interpreted it for the purpose of the field staff in their evaluation of petitions, but I certainly agree with you.

I just think that whether or not this order is canceled, and it could very well be, certainly it is being interpreted in a much, much too broad and profound way for what it was intended to do. And so we believe we made that point pretty clear today with the Immigration Service and with the General Counsel.

I intend to carry that further with them in discussions and communications to make sure that they can put that thing on a better basis. I guess my last question is, you mentioned in your first statement that this was a problem of organized crime more so than immigration.

Certainly it is a worldwide syndicate with a lot of people who are accomplices to this heinous activity who are really the ones that in a scale of priority are at the very top of the priority list to be put out of commission.

I can't quite agree with you that this is not in part an immigration problem because they are obviously motivated in part by our system. They are motivated by money and greed and lack of sensitivity for human kind, otherwise they couldn't keep doing what they are doing.

But obviously part of the whole deal is using telecommunications. It is using ships that have been put out of commission. It is using corrupt local officials and it is using laws that aren't working any more. So maybe you can help me a little bit on that to say that this is not an immigration problem.

It seems to me that it is at least in part.

Mr. DER. Well, immigration is one vehicle, just as drugs or prostitution that they use to make money and to enhance their greed and ruthlessness. As my written testimony indicates, there are many parts of President Clinton's June 18 statement that we support, and the most important part of his initiative is to try to stop it, the criminality at the front end, put pressure on these governments, put pressure on these nations that flag these ships, say something to Japan with regards to the sale of these cargo ships that they know are being retrofitted in Taiwan for this kind of activity.

I can't imagine that people don't know what is going on. And also to put pressure on the Chinese Government because people are leaving and somebody has to notice.

Mr. MAZZOLI. Exactly right. Ms. Pelosi this morning said the very same thing. She just could not believe that the Chinese Government, as well as the local officialdom, do not know what is going on. They do know what is going on clearly and they could be part of the solution.

So I want to mention to my colleague from California, Mr. Der is the only one who has testified. He also needs to catch an airplane, so if you have questions, we would be welcome them now.

Mr. BECERRA. Mr. Chairman, I haven't had a chance to really examine his testimony or listen, so I will withhold any questions.

Mr. MAZZOLI. It was excellent testimony and it shadowed to some extent the testimony that Ms. Pelosi gave this morning about the framework against which we should measure anything we do, which is everything from due process to the question of legal protections and so forth.

Mr. Der, thank you very much.

Mr. BECERRA. Mr. Chairman, if I could ask a quick question and hopefully it is a quick question.

Mr. Der, with regard to the issues of standard of proof and appellate review of some form, did you touch on those or did your testimony?

Mr. DER. The testimony talks about maintaining the current standard of well-founded fear. I don't believe that there is any need to deviate from that standard, provided that there is due process and certainly the testimony talks about facilitating, expediting the adjudication of these cases because more often than not, it is not necessarily the petitioners doing it that it gets dragged out.

Mr. BECERRA. In terms of the accelerated adjudication, in terms of any type of review of the initial decision by an INS officer, if that is what we have, what are you proposing?

Mr. DER. If it is an INS officer, it should be reviewed by a judge or the Board of Immigration Appeal.

Mr. BECERRA. Within what timeframe?

Mr. DER. I think whatever is judicious and expeditious and provided that there is due notice on all sides. I don't think it should be like the next day, but certainly they need to put more resources so that these cases can be heard on a more timely basis.

Mr. BECERRA. Thank you.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you, Mr. Der and have a nice trip back to San Francisco.

And let's see, the next witness, Ms. Lee.

STATEMENT OF YVONNE Y. LEE, NATIONAL EXECUTIVE DIRECTOR, CHINESE AMERICAN CITIZENS ALLIANCE, SAN FRANCISCO, CA

Ms. LEE. Thank you, Mr. Chairman. My name is Yvonne Lee from the Chinese American Citizens Alliance. We are a national membership supported organization established since 1895.

Today I am also representing the Committee for Immigration Justice, CIJ, which is a northern California coalition comprised of

over 60 community service and civic organizations dedicated to the principle of family-based immigration.

Immigration has been the cornerstone of the American experience. Our country has been enriched through the invaluable contributions from immigrants who sought a better quality of life, or yearned for democratic freedom for themselves and their children. The talents and determination to participate has helped build America into the undisputed world leader she is today.

However, Chinese and other Asians were not allowed the same immigration rights due historical exclusionary laws targeted specifically on Asian countries. The most notable in the legislation was the 1882 Chinese Exclusionary Act. It was not until the repeal of this act in 1943 and ultimately the 1965 Immigration Reform Act that Asians have been able to immigrate to the United States primarily through the family reunification provisions.

As the Asian-American population begins to increase and the community gains higher visibility during the 1980's, and coupled with misleading reports on the economic and environmental impacts caused by immigration, there is growing sentiments that U.S. immigration laws, both legal and asylum should be restricted.

The recent highly publicized incidents of boat smuggling has certainly added fuel to the debate. It has also unfairly thrust the Chinese-American community into the national immigration debate. More importantly, we have been scapegoated by improper public statements implying the entire community's involvement with the smuggling.

As expected, all of these factors have caused a tremendous backlash on the Chinese- and Asian-American community.

As you consider proposals to address the complex issue of legal and asylum immigration, we strongly urge that any American immigration policy cannot be influenced by fears and emotions but defined by humane, factual and logical grounds.

Therefore, CACA and CIJ, we submit for your consideration the following recommendations: No. 1, all undocumented Chinese aliens detained must be treated humanely and granted due process under the law. Our country must not compromise the basic principles of due process and humanitarian concerns for these aliens. They should be given the opportunity to present their legitimacy for residency here.

We have not been able to review any of the proposed legislations and summary exclusions but we do wish to raise a serious concern on how the summary exclusionary process, specifically how a frivolous claim is to be determined, will be managed.

Specifically, will the asylum officer receive proper training on global human rights issues as well as cultural and linguistic awareness? Also, will there be a meaningful review process for the petitioner should the initial asylum officer summarily deny a claim?

Second, the Government must investigate and prosecute those involved in smuggling people for profit and indentured servitude. Both the CACA and CIJ support legislation which would impose increased penalties on the smugglers who are found guilty of smuggling human beings for indentured servitude. We believe this is the most effective way to stop the main source of human slavery into this country.

While we support efforts to increase resources for the proper authorities to investigate and prosecute the smugglers, we are opposed to legislations which would grant the INS agents expanded enforcement authority, such as allowing the use of wiretaps. We believe such highly technical and sensitive forms of investigations involving wiretapping should only be conducted by trained criminal investigators such as the FBI.

Third, the recent smuggling cases cannot be used as a cause to diminish the existing asylum and family-sponsored immigration laws. We recognize that there is a need to better administrate the immigration petition process, but the changes must be made from the operational perspective and not to lessen the intent of asylum and especially the family-sponsored immigration.

For years there was a denial of opportunity to unite families of Asian descent. Great progress has been made to respect the right to family reunification. Nevertheless, since it was not until 1965 that Asian countries were able to fully participate, there is now a tremendous backlog of family-based immigration petitions from countries such as China and the Philippines.

For instance, a family in China approved by the INS to immigrate on the fourth preference must now wait another 10 years before they can actually enter our country. Yet, the family still patiently await their turn. It would not be fair for these families that they endure longer waits if our Government chooses to limit legal immigration now.

The Immigration Act of 1990 allows 226,000 worldwide visas be granted each year for family-sponsored petitioners.

Lastly, another effort to deter the smuggling in our opinion is to have a better understanding of the real victims themselves. These Chinese aliens were given misinformation on the American way of life, immigration and labor opportunities here.

They endured the dangerous voyage in hope of starting a new life, but instead they are caught in this seemingly unbreakable cycle of long-term indentured slavery. We recommend that a government sponsored factfinding delegation be formed to visit with the Chinese Government and the Fujien Province where most of the organized smuggler activities have originated.

The delegation should include members of the Chinese-American community, the congressional leadership and also the immigration rights advocates. The visit can accomplish two objectives. One is to acquaint all of us on the true conditions in Fujien, China, and what motivations these residents have in coming to the United States in such dangerous situations.

Second, the delegation can provide accurate information on all issues of concern to the Chinese Government and to the local province leadership. It is our hope that once all the facts are made available to them, fewer Chinese nationals would fall victims to the smuggling operation anymore.

There is a tendency to blame our country's economic and environmental costs on immigration policies. There are the long-term positive benefits of these newcomers who have contributed to our country's educational, economic and social progress, and I urge the members of the committee to carefully consider the above positions

and ultimately uphold the American principle of family-sponsored and asylum-based immigration.

Mr. MAZZOLI. Ms. Lee, thank you very much. That was a very nice statement.

[The prepared statement of Ms. Lee follows:]

PREPARED STATEMENT OF YVONNE Y. LEE, NATIONAL EXECUTIVE DIRECTOR, CHINESE AMERICAN CITIZENS ALLIANCE

June 30, 1993

Dear Chairman Mazzoli and Members,

House Subcommittee on International Law, Immigration and Refugees:

Thank you for the opportunity to present this testimony on the issue of the boat smuggling involving Chinese nationals. I am representing the Chinese American Citizens Alliance (C.A.C.A.), the nation's oldest membership supported Asian civil rights organization. Since 1895, C.A.C.A. has advocated for fair legislations to protect the rights of Asian Americans in the area of immigration, education, employment and electoral participation. I am also submitting this testimony on behalf of the Committee For Immigration Justice (CIJ), a volunteer organization dedicated to the principle of family based immigration representing over 60 community service groups in Northern California.

Immigration has always been the cornerstone of the American experience. Since her founding, our country has prospered largely due to the invaluable contributions from immigrants who sought a better quality of life, or yearned for a democratic environment for themselves and their children. Their talents and determination to contribute has helped build America into the undisputed world leader she is today. However, due to historical exclusionary laws dating back to the 1882 Chinese Exclusion Act, most Chinese and Asian Americans were not allowed the same immigration rights until the 1943 Repeal of the Exclusion Act and ultimately the 1965 Immigration Reform Act. Since 1965, Asian Americans have been able to immigrate to the U.S. through the family reunification preference provisions. The Asian American population has increased during the past two decades primarily due to the new immigration policy. According to the U.S.

Immigration Statistics, the following numbers of legal immigrants were admitted to the U.S. between 1920 and 1985:

Germany: 7,031,370

Italy: 5,330,060

Ireland: 4,697,290

Austria/Hungary: 4,326,000

China: 735,095

Hong Kong: 242,077

Despite its late arrival, the contribution of the Asian American community towards our country's advancement is well documented.

As Asian Americans gain higher visibility during the 80's, coupled with misleading statements on the economic, environmental impacts caused by immigration, there is growing sentiments that U.S. immigration laws be restricted. Fueling this are recent highly publicized incidents of boat smuggling involving Chinese nationals which have unfairly thrust the Chinese American community into the national immigration debate. More importantly, the community was scapegoated by improper public statements made by federal agency representatives such as INS San Francisco District Director David Ilchert implying the community's involvement in the smuggling activities. As expected, these factors have caused a tremendous backlash on the Asian American community.

As our legislative leaders are pressed to address this volatile issue of immigration, we strongly believe any American immigration policy must not be based on fears and

emotions, but defined by humane, factual, and logical grounds.

Therefore, C.A.C.A. and CIJ submit for your consideration the following positions:

1. All undocumented Chinese aliens detained must be treated humanely and granted the due process under the law.

While much attention has been placed on the current asylum law and its operations, our country must not weaken our American principle of democracy by compromising the basic principles of due process and humanitarian concern for these aliens. These individuals should be given the opportunity to present their legitimacy for residency. As we have not the opportunity to review the proposed Summary Exclusion legislations, we raise our concern on how the summary exclusion process, specifically how a frivolous claim is determined- will be managed: Will the asylum officer receive proper training in the highly sensitive area of human rights, as well as cultural and linguistic sensitivities: whether there is a meaningful review process for the petitioner should the initial asylum officer summarily denies the claim.

2. The government must vigorously investigate and prosecute those involved in smuggling people for profit and indentured servitude under existing criminal statutes.

The Chinese American community has been unfairly linked to the recent boat smuggling activities. Blaming the entire community for individual acts is prejudice and divisive. Such irresponsible comments have inflamed the already growing xenophobic and anti-

Asian sentiments in this country.

The Chinese American community will support legislations which would impose increased penalties on the smugglers found guilty of smuggling aliens for indentured servitude. We believe this is the most effective way to stop the tragic cycle of human slavery.

There may be additional proposals designed to give the INS expanded enforcement authority, such as allowing the use of wiretaps. C.A.C.A. and CIJ believe such highly technical and sensitive forms of investigations should be carried out by trained criminal investigators such as the FBI agents. We are concerned that if granted this power, the INS, whose members have already made improper statements implying the Chinese American community's involvement of smuggling, may have a prejudicial view of the Chinese American community. The agents may not be able to respect the constitutional rights to privacy of the otherwise law abiding citizens of the Chinese American community.

3. The recent smugglings must not be used as a vehicle to curb existing asylum and family based immigration laws.

While we recognize the need to better administrate the immigration petition process, the intent of asylum and family-based immigration cannot be diminished. As 1993 marks the fiftieth anniversary of the repeal of the Chinese Exclusion Act-It was not until the 1965 Immigration Reform Act that Chinese and other Asians were allowed to immigrate to the U.S.-any limits imposed on the existing immigration laws will be detrimental to the Chinese and Asian American communities whose members already must endure long waits to be reunited with their families. For years, there was the denial of opportunity to unite families of Asian descent. But we have learned from the tragic lesson of forced

family separation and great progress has been made to respect the right to family reunification for Americans. The need for family based immigration must not be diminished.

There is a tendency to blame our country's economic and environmental costs on immigration policies, but there is no denial there is the on-going long term positive benefits of these newcomers who have contributed to our country's educational, economic and social progress. C.A.C.A. and CIJ urge members of the Subcommittee on International Law, Immigration and Refugees to carefully consider the above positions and ultimately uphold the principle of family based immigration for all Americans.

Mr. MAZZOLI. Mr. Mark.

STATEMENT OF STANLEY MARK, PROGRAM DIRECTOR, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, NEW YORK, NY

Mr. MARK. Thank you for the invitation to testify before the committee. My office represents six of the survivors of the *Golden Venture* and attached to my written testimony is a set of clippings describing this ordeal for the record.

I am testifying today to support the comprehensive and coordinated enforcement approach which is needed in this particular situation. As you know, this is a greed driven system, that is the slave trade system.

It is greed driven abroad and it is also greed driven here. Most of the discussion today during the testimony by other government agencies has focused on the criminal aspects and the need for a coordinated response by government agencies.

We support that effort, but we would ask people to examine what the current sanctions are under criminal law and to immediately proceed with prosecution without waiting for passage of enhanced penalties.

The aspect which I don't think is dealt with adequately, or there was some mention just before on the panel that was I guess about an hour ago, a person from the Department of Labor mentioned that there should be a role for the Department of Labor.

Unfortunately, I think its role is too narrow. According to the statement issued by the Clinton administration, it indicates that the Department of Labor will review the labor law enforcement activities targeted at the employment of aliens smuggled into the United States by organized crime.

We think it should be a much more expanded role and that role should include full labor law enforcement to take out the incentive that many employers have in our communities to hire not only undocumented aliens but also these indentured servants.

Why we believe this is that because it is a greed driven system, the slave traders who are benefiting with making tremendous profits out of this are able to thrive because of the terrible working conditions that exist in our communities, and unless we tackle those conditions and try to mitigate or eliminate them, there will be always fertile ground for the slave traders to continue their business.

This would take, I believe, increased enforcement on the order of spending the same amount of money that we do for enforcing employer sanctions and for providing more investigators at the Department of Labor at the local level.

Currently in New York City we have 13 investigators for the whole city of New York, Federal investigators that are mandated to enforce minimum wage laws. We think we need more of those types of folks. That would help, I believe, eliminate or at least mitigate some of these terrible working conditions that exist in the restaurant and garment industries in the city of New York and that we believe that this would undercut the slave traders.

That is only part of the package of course. There was some mention earlier today about international cooperation, Yvonne has spoken to that. We also support that idea. Again, it goes to a more

comprehensive approach, but it will never be comprehensive enough unless we have the type of labor law enforcement that I mentioned just a moment ago.

There are many people in our communities, not all of whom are indentured servants. Most people in the community have to work in these two industries and the hours are extremely long. People get paid sometimes \$2 an hour. They work 60 hours a week without job security or benefits. These conditions are inhumane and they exist because there are people participating in organized crime that encourage these kinds of wages and working conditions precisely because it helps their business and profits.

The last thing I would like to say is there should also be a long-term structural response. As an Asian-American and a person who has followed immigration debates for the last few years, there seems to be periods of time when there is a need for Asian-Americans to present their point of view or perspective, such as today. Commenting on some of the proposals that address alien smuggling, I would, however, like to see a more long-term commitment institutionally to include Asian-American perspectives, and I would ask the subcommittee and other Members of Congress to consider expanding the Legal Immigration Commission, which was created by the Immigration Act of 1990 and it contains nine members who have been appointed. We would like to see the Commission expanded to 13 and to include an Asian-American representative who would be able not only to comment on the proposals by the administration dealing with alien smuggling, but also to address some of the other more long-term policy issues affecting Asians and immigration.

About one out of every two legal immigrants coming into the United States currently is from Asia and I think that warrants someone from our community to be involved in policy deliberations, decisions, and recommendations.

Mr. MAZZOLI. Well, good. Thank you very much.

[The prepared statement of Mr. Mark follows:]

PREPARED STATEMENT OF STANLEY MARK, PROGRAM DIRECTOR, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, NEW YORK, NY

INTRODUCTION

Good morning, my name is Stanley Mark. I am the Program Director of the Asian American Legal Defense and Education Fund (AALDEF) located in New York City. AALDEF represents six of the survivors of the Golden Venture which ran aground near Rockaway Queens on June 6, 1993. Attached to this statement are news clippings describing this ordeal. If permitted to stay in the United States, most survivors of the Golden Venture will eventually make their contribution to the local economy and to society as a whole in the tradition of immigrants and refugees who came before them. Full enforcement of current labor and criminal statutes will reinforce this tradition.

I am testifying in support of a comprehensive and coordinated enforcement response under current law directed against organized crime elements making huge profits from alien smuggling (also known as the modern slave trade of indentured servants). However, the Clinton Administration's proposed plan of action fails to include, as a fundamental part of its total enforcement package, the full and vigorous enforcement of labor laws that would eliminate slave-like working conditions and minimum wage violations that serve as fertile ground upon which the slave trade of indentured servants has grown during the last two years. Any long term structural response (to the issues raised by alien smuggling as well other related immigrant rights issues) must incorporate an Asian American perspective which is currently missing on the Commission on Legal Immigration Reform mandated to review and recommend changes in immigration policy and law. AALDEF recommends that full labor law enforcement should proceed immediately and that the Commission be expanded to include an Asian American to review and comment on the administration's proposal. In addition, the National Asian Pacific American Legal Consortium composed of the Asian Law Caucus (San Francisco), Asian Pacific American Legal Center of Southern California (Los Angeles) and AALDEF will be submitting for the record a joint statement commenting on the administration's plan of action for alien smuggling and addressing related legal issues affecting immigrant rights that are not raised in my statement.

BACKGROUND

Founded in 1974, AALDEF is a non-profit civil rights organization that addresses local and national issues affecting Asian Americans of diverse backgrounds through impact litigation and community education. AALDEF's current program priorities include immigrant rights, voting rights, employment and labor rights, and the elimination of anti-Asian violence and environmental racism. Since its inception, AALDEF has advocated for fair and humane immigration and refugee policies that impact on the diverse Asian American immigrants and refugees.

GOLDEN VENTURE

On June 6, 1993, the grounding of the Golden Venture in Rockaway Queens resulted in the human tragedy of ten deaths and scores of injuries. Besides pointing to the dire conditions endured by the hundreds of survivors who now face legal hurdles in their quest to survive and remain in the United States, this tragedy also raises fundamental concerns about their detention and treatment under the law. Officials of the Immigration and Naturalization Service (INS) have indicated in the press that they intend to make the survivors an "example". The INS District Director in New York has characterized the survivors as an "illegal alien problem" and not political asylum applicants. Most of the survivors have been relocated from New York City and are now being detained indefinitely at a number of detention facilities and county jails in Pennsylvania, Virginia, Louisiana, and other states. Their widespread dispersal and detention outside New York City raised several issues about the lack of access to interpreters and attorneys who had been denied entry into the detention facilities. In New York City, the INS did not permit entry into its detention facility until June 11, 1993 while at the Lehigh County Jail (Pennsylvania) where more than 50 survivors were detained, attorneys with interpreters were denied access to the jail on June 16, 1993 despite obtaining permission to see detainees from a local INS official several days beforehand. Although attorneys are now gaining access to these facilities, no official list compiling all the survivors who were processed in New York City before their relocation has been released by the Immigration and Naturalization Service.

The human tragedy resulting from the grounding of the Golden Venture only exposes the endless nightmare shared by many immigrant workers who toil in substandard working conditions for pay well under the minimum wage. The slave trade (not chattel slavery but peonage) exists because unscrupulous employers and businesses including organized crime encourage labor conditions favoring slave labor as indentured servants. Only vigorous prosecution and full enforcement of existing criminal and labor laws (such as minimum wage laws which cover workers regardless of their immigration status) can undermine the greed-driven exploitation of immigrant workers caught in the highly profitable slave trade industry. Organized crime's exploitation of immigrant labor is fueled by local and domestic exploitation of immigrant workers. The substandard wages and working conditions for slave labor serve as the fertile ground for the continued growth of the slave trade. To stop the slave trade, we must end the inhuman working conditions, long hours, and violations of the minimum wage and other labor laws endured by working people regardless of their legal status. Criminal prosecution and international cooperation must be part of a total enforcement package but only full labor law enforcement will remove the financial incentive for employers to hire indentured servants or undocumented aliens. In addition, the repeal employer sanctions must be considered since this law has benefitted and facilitated the slave trade by cutting off any hope for indentured servants trying to leave their masters for a new employer.

ANTI-ASIAN AND ANTI-IMMIGRANT BACKLASH

With the current economic recession, another cyclic wave of anti-Asian sentiment has taken hold. It can be measured by the rising numbers of anti-Asian incidents documented by local and state law enforcement agencies. This recent trend of violence and harassment against Asian Americans has new branches growing from historical roots of exclusionary and discriminatory immigration laws that perpetuated harmful stereotypes. Asian Americans are perceived as "foreigners" regardless of how many generations their families have been in the United States. Instead of acceptance or tolerance, Asian Americans have become too often the scapegoats for the loss of jobs, the trade imbalance, and the economic ills of society. Frequently, Asian Americans are blamed for the problems of those

not doing so well and by those who feel threatened by the influx of immigrants from Asia. These nativist attitudes are largely responsible for the current wave of anti-immigrant and anti-Asian sentiment in this country and have given rise to a disturbing trend of anti-Asian violence recognized as a national problem by the United States Commission on Civil Rights.

A recent New York Times/CBS News Poll reported that 61% of the persons surveyed said that they favored decreasing immigration due in large part to the perception that immigrants were taking decent paying jobs away from American workers. Ideally, job creation will lessen the tensions between long-time residents and the newcomers but the current recession limits the possibilities of new jobs for now. Nevertheless, enforcing the labor laws and particularly the minimum wage would go a long way in convincing working people, citizen and non-citizen alike, that their economic futures are tied together and by preventing employers from pitting the labor cost of citizens and non-citizens against each other. However, the administration's plan of action must include a sizeable increase of resources to hire more than the current thirteen investigators responsible for the enforcement of minimum wage laws for the entire City of New York.

CONCLUSION

AALDEF supports full criminal prosecution of the slave traders under current law but it must be accompanied by full labor law enforcement covering all workers as one way to mitigate concerns about job displacement until more jobs can be created. Proposed modifications of criminal laws will be examined more closely as well as the other aspects of the Clinton Administration's plan of action in the NAPALC joint testimony which will be submitted for the record of this hearing. No comprehensive and coordinated plan of action can ignore the need to have structural reform that will place an Asian American onto the Commission on Legal Immigration Reform to comment not only on alien smuggling but also on the full range of immigration and refugee issues before the Congress and the Clinton Administration.

IN CHINA, IT'S:



THE SON of survivor of the Golden Venture. His father is in detention center after being smuggled to U.S.

Cops net 39 in raids on alleged safe houses

By JOSE LANIERY
and CHRIS INTENELL

Police in Queens yesterday raided three alleged safe houses for illegal Chinese immigrants in a sudden burst of busts that brought to six the number of gang hideaways uncovered this month.

By late afternoon, police had cuffed 39 people. Perhaps 13 are Fuk Ching gang members, police said. Four of the hostages found were to be screened for tuberculosis. Deputy Chief Raymond Abruzzi, commander of Queens detectives, last night said all three safe houses closed were operated by the Fuk Ching gang, which, like other violent Chinatown gangs, use the hideouts to hold illegal Chinese immigrants who have been smuggled into the U.S.

The gangs usually force their prisoners to work off passage fees of approximately \$20,000.

Yesterday's third and largest raid found 20 Chinese men huddled together in a 6-by-6

footroom in a Bayside basement. Police said four women in had been sexually abused.

Neighborhood children covered their mouths with their T-shirts as police led hostages in surgical masks and eye goggles down the driveway of the building at 208-10 50th Ave. Four of the immigrants were suffering respiratory problems that an EMS official said could be caused by tuberculosis.

The bust had begun with a tip from a former gang hostage and was preceded by a sting at a Dunstan Donuts in Flushing, police said. The informant told authorities he had been kidnapped by gang members after paying off his ransom. He said he was tortured and released after being ordered to come up with an additional \$15,000.

Cops said they arrested two gang members who appeared at the donut shop for a partial pay-off and were then led to the Flushing safe house.

The first raid occurred about 10 a.m., when members

of the Emergency Service squad — automatic rifles in hand — raided a squalid basement apartment at 133-34 Blossom St., also in Flushing. Police found steaming rice in a dirty pot on the stove of the dark, smelly basement, but nowhere in sight were most of the two dozen illegals and their jailers whom police expected to find.

"We missed them by 15 minutes," said Lt. Dave Poini of the NYPD Major Case Squad. "Someone must have tipped them we were coming."

Three hours later, police serving a search warrant busted into a second alleged safe house, 104-30 73d Ave., also in Flushing.

Fifteen men were arrested, and police were still checking identities late yesterday. In earlier raids this month, police arrested 14 gang members and jammed over 44 illegal immigrants to the Immigration and Naturalization Service.



YOUNG BROTHERS, with their children, hope their husbands can make a better life in New York.

CHILD OR ELSE

Strict laws rule birth, pregnancy

By YING CHAM
Daily News Staff Writer

FUZHOU, China — The wife of a survivor of the Golden Venture tragedy said her brush with China's Draconian one-child law began when she married her childhood sweetheart at 19 — four years younger than the officially sanctioned marriage age for women.

She broke the law again when she gave birth to a girl a year later, also four years under the sanctioned age. For the offense, she was fined more than \$100.

Three years ago, she gave birth to another girl.

If it's a boy, I would accept sterilization and forget it," said the 23-year-old woman.

To avoid being sterilized, she has sent the new baby away to live with a family in a remote mountain area.

Feelings of guilt

"I often wonder how she's doing," she said, tears welling up in her eyes. "I feel so guilty, but I have no choice."

If we can go to America, then I can have as many kids as I want," she said. "In China, there's no place to hide."

In a dozen interviews here, the wives of numerous survivors agreed that their loved ones had embarked on the ill-fated voyage looking for jobs and money.

But, in shabby voices, they also revealed the pain and horrors they have endured under the one-child policy.

For women in China today, the most private parts of their lives are the most regulated properties of the state.

Strict controls

A Chinese woman must take orders from the government as to when to have sex, when to get married, when to bear children and how many to have.

The state also decides if she should practice birth control, abort a fetus or be sterilized.

The women, most of whom talked on condition of anonymity, said in a society that still believes in "more sons, more blessings," women whose first-born is a girl often hide or run away when they become pregnant again.

Any women found to be pregnant against the law will be "persuaded" to have an abortion — even up to the final months of pregnancy.



CHILDREN of Golden Venture survivors took in pictures of their father's ship as they flew.

"If you refused to have an abortion and ran away, they'll tear down your house."

Wife of a carpenter from Changlu County

Baby girls are often abandoned, given up for adoption and, in some cases, killed, the women told.

Launched in the 1970s, China's policy says that for city couples, one child is allowed. In the countryside, peasants whose first-born is a girl may have a second child four or five years later — when the village's quota allows.

Laws order sterilization

But women who have had two kids, boy or girl, must be sterilized. Violators are subjected to fines, firings from their jobs or loss of other public benefits.

In its defense, the Chinese government says that with its 1.1 billion people, tough measures are needed to avoid a runaway population explosion or disastrous economic consequences.

Remaining the Chinese of be-

man rights violations, the Bush administration ordered that Chinese applying for political asylum who cite the one-child rule should be given no special consideration.

And, taking advantage of that order, hundreds of illegal Chinese immigrants smuggled into the U.S. — in 1992.

clinging many survivors of the Golden Venture, which ran aground off the Rockaways in early June — have asked for asylum claiming that they have been persecuted under China's population-control policies.

The wife of a carpenter from Changlu County told her experience.

"If you refused to have an abortion and ran away, they'll tear down your house and smash your TV, your furniture," she said.

Forced abortions

"And they will force you to abort the child even up to the day before you're due. You'll get an injection and will have a still-birth 12 hours later. Sometimes, the fetus may still be alive."

Shi-Yanan, whose brother was among the ship's survivors, said she knew of many women in her town of Tianjiang who have given birth in secret.

But hiding is often difficult, since all women have to get checkups every three months. Those who fail to go will be fined. They also will be visited by officials from the neighborhood committee or from her place of work.

Snakeheads dial 'f' for fear

By YING CHAM

Snakeheads, the Chinese smugglers who bring illegal immigrants into the U.S., are now calling them "families."

The chilling phone call came from half a world away while the family was eating lunch in New York.

"Get your money ready," the caller told Chen Tianxing, a peasant in China's Fujian Province, home to most of the Chinese refugees who come to the U.S. through smugglers' pipelines.

"Your son will arrive in the United States in the next few days."

That was six weeks ago, and Chen still has not heard from his 25-year-old son, who boarded a smuggler's ship in September.

But Chen's phone number turned up in a \$3,500 phone bill found Saturday in the alleged safe house of a snakehead, or smuggler, in Shaoxing Bay, Brooklyn, where six alleged members of the Fuh Ching gang were arrested and charged with racketeering, immigration, assault and robbery.

Police were led to the house by a young Chinese woman who said she had

been kidnapped at Kennedy Airport, taken to the house and raped. Eight young Chinese men who came to the U.S. as human cargo were arrested during the raid.

Fate unknown

It was not immediately known whether Chen's son, Wajin, was among those rescued by police.

On the 15-page phone bill covering the period from May 4 to 26, 240 calls were made to China and 400 calls to numbers in the metropolitan area. Police say the Fuh Ching conducted business from the house.

Almost all the China calls were made to Fuzhou, the provincial capital of Fujian Province and neighboring Changlu County.

A handful of calls also were made to numbers in New Jersey, Pennsylvania, Florida, California, Illinois and Iowa.

Most of those numbers are for Chinese restaurants.

Reached in his village home, Chen said his son had traveled north by bus and boarded the ship in Zhejiang Province.

The snakehead fooled as, said Chen. "He told us he could get there in a month."

Body likely adds to Venture's grim toll

By CHRIS MITCHELL

Staff Writer

A fisherman found the decomposed body of another Asian man on a Queens beach early yesterday, a half-mile west of where the Golden Venture and its cargo of Chinese aliens ran aground June 6.

The discovery near Jacob Rius Park brought to two the

number of bodies, identified only as Asian men, that have washed ashore in as many days. A police spokesperson said the finding apparently raises the smuggling ship's death toll to eight.

The man found yesterday was wearing blue underwear and a striped shirt, police said.

As the tragic results of the Golden Venture journey

minuted, detectives and squad commanders from precincts throughout the city gathered at police headquarters to share notes on Asian gangs. The strategy session was called by Chief of Detectives Joseph Borrelli, so that "everyone knows what all the people involved are working on," said police spokeswoman Suzanne Trazoff.

Authorities believe the Fuk Chung gang used the rusty

Golden Venture to smuggle the aliens into this country for approximately \$30,000 a head.

The Immigration and Naturalization Service has not released the identities of the 277 survivors, and yesterday the Asian American Legal Defense Fund renewed its demand that the mystery end for the immigrants' families in the United States and China.

With John Marzulli

U.S. Releases 4 of the Chinese Seized From Ship

By STEVEN LEE MYERS

The Immigration and Naturalization Service yesterday released four of the nearly 300 Chinese aliens seized after a freighter ran aground off a Queens beach on Sunday and said it would consider releasing others on a case-by-case basis pending hearings on their claims for asylum.

The move represented a turnaround by the agency, which had said earlier this week that it would keep all the aliens in detention as an example to other would-be immigrants and their smugglers.

The four immigrants — all young women under 18 years old — were quietly released from a detention center on Varick Street in Manhattan into the custody of relatives who live in the New York metropolitan region.

Asked if the release reflected a change in policy, Thomas Durand, a spokesman for the immigration agency, replied yesterday evening, "A comment on that can't be forthcoming right now."

The release came as criticism mounted from immigrant-rights organizations and other groups that immigration officials had taken highly unusual steps to block their access to the passengers, most of whom have been moved to other detention centers in Pennsylvania, Maryland and Virginia.

Edward J. McElroy, the agency's deputy director in New York, angrily defended the agency's handling of the immigrants at a meeting with reporters yesterday, saying officials had treated them well and afforded them every opportunity to request a lawyer. Mr. McElroy said that he had asked several immigrant-rights groups to provide a list of their lawyers but that he had not received any responses.

Stanley Mark of the Asian American Legal Defense and Education Fund, a non-profit group in Manhattan, said officials had blocked access to the immigrants ever since they came ashore and that his group had repeatedly offered to provide lawyers, only to be rebuffed by new obstacles.

"I think they're playing a game," Mr. Mark said, "throwing up new rules while they moved these people out of the way."

The release of four of the immigrants came as new details emerged about the long, harrowing odyssey of those aboard the Golden Venture, which ran aground on a sandbar 200 yards off the Rockaway Peninsula after traveling more than halfway around the world.

Mr. McElroy said yesterday that some of the 27 women among the ship's passengers had been sexually assaulted during the voyage, apparently by the crew or enforcers for the smugglers. He declined to elaborate on the attacks, but said that investigators would continue to investigate and that charges could be brought against those involved.

The I.N.S. shifts on a pledge to keep all the passengers in detention.

The journey of the Golden Venture began near Singapore in January, but for nearly 200 of the immigrants, their hopeful voyage to America began much earlier, when they boarded another decrepit ship last August from smaller ships ferrying them from the mainland near Bangkok. It was on this first ship that the sexual assaults took place, said a law-enforcement official who spoke on condition of anonymity.

The first ship, called Najd II and registered in Saudi Arabia, picked up nearly 200 immigrants in the sea off Thailand in late August. From there, Najd II steamed toward Mauritius, the island nation in the Indian Ocean. The Mauritian Government denied it permission to dock on Sept. 4, but it remained offshore until Sept. 22, when, after refueling, it left.

"This ship, the Golden Venture, came in somewhat down the road," said Wayne R. McKenna, the coordinator of a Federal task force on immigrant smuggling in Washington, said. "The Golden Venture is just the latest saga in a misadventure that has been going on since at least September."

The Najd II then steamed to Mombasa, Kenya, arriving on Oct. 6, and government officials in Kenya held the immigrants in a sort of loose detention from October until early April. In November, the authorities in Kenya turned away another ship evidently sent to pick up the stranded immigrants.

The Golden Venture arrived in Mombasa in April — having already picked up 90 people in the seas off Thailand in February — and carried the Chinese passengers to America.

At Least 236 on Board

The authorities said yesterday that they now believe at least 235 passengers and 11 crew members were aboard the Golden Venture when it came ashore. Six died and one remains hospitalized, said a spokesman, John Ingham. Five others disappeared in the confusion after the grounding.

Yesterday, a wake was held in Chinatown for four members of the Fuk Ching, a Chinatown gang linked by the authorities to the Golden Venture.

Two of the men were brothers of Guo Liang Chi, the gang's reputed leader, and all were slain in a shoot-out in a New Jersey suburb on May 24 that the authorities say is part of a vicious struggle within the gang over the proceeds of immigrant smuggling and other rackets.

Only 31 of the illegal immigrants remain at the detention center at 201 Varick Street in Manhattan. The others have been moved to detention centers out of state, including 110 in York County, Pa.; 60 in Lehigh County, Pa.; 45 in Frederick County, Va., and 23 in Wicomico County, Md., according to immigration officials and officials at the prisons.

The four women were released sometime yesterday afternoon, but Mr. Ingham and Mr. Durand declined to discuss the details.

The release came only hours before Mr. McElroy, meeting with a group of reporters to discuss the agency's handling of the case, said that immigration officials would consider releasing the immigrants on their own recognizance while they await hearings before Federal judges on the Government's decision to deny them admission — a process that could take as long as two years.

An immigration official, he said, would decide whether to release the immigrants on a case-by-case basis — a normal procedure for all detainees — weighing such questions as the probability they would appear at their exclusion hearings and the merits of their asylum pleas.

Mr. McElroy said that by releasing a detainee awaiting exclusion, officials risked the detainee not showing up, as often happens. Also, since immigrants in most cases still owe money for the passage to America, he said that "by releasing an alien from confinement, you facilitate the activities of the smugglers."

7 Bodies of Asian Immigrants Unidentified After 3 Weeks

By SETH FAISON

Nearly three weeks after a ship crammed with Chinese immigrants ran aground off Queens, 7 of the 10 bodies of those who perished trying to swim ashore are still unidentified.

Community organizations, trying to help families concerned that a relative may be among the victims, complain that the Immigration and Naturalization Service has been unwilling to release photographs or other vital information needed to identify the bodies and bury them properly.

As a result, the bodies have fallen into a kind of bureaucratic limbo between the Federal immigration agency, the City Medical Examiner's Office, the New York Police Department and the Consulate of the People's Republic of China. Inquiries to each organization have been directed to another.

"I don't understand this at all," said William P. Chiu, chairman of the American Fujian Association of Commerce and Industry. "We have tried to find out from the police and the I.N.S., and everyone tells us to go somewhere else."

I.N.S. Says It Is Trying

A spokeswoman for the I.N.S., Rosemary LaGuardia, said that the Federal agency was "aggressively attempting to assist the Medical Examiner's office in identifying the remaining bodies."

"We are showing photo spreads to the detainees and attempting to check fingerprint records," Ms. LaGuardia said.

The men, believed to be from Fujian Province in southeastern China, were killed when the Golden Venture, a tramp steamer carrying nearly 300 Chinese immigrants, ran aground off Rockaway Peninsula before dawn on June 6.

Mr. Chiu, who helped organize a Buddhist ceremony on Tuesday for the dead on the beach at Riis Park, said leaders in Chinatown had volunteered to pay for funerals and to send the bodies back to China once they are identified.

Complaints that photographs have not been made available.

Possible Fear by Families

Stanley Mark, program director of the Asian American Legal Defense and Education Fund, said he had received inquiries from relatives, but that I.N.S. officials told him they were not prepared to release any information about the identities of the dead.

A lawyer who represents Chinese immigrants said that at least one relative was contacted recently by a man seeking payment for the passenger's voyage, even though it ended in death. The lawyer, who insisted on anonymity, raised the possibility that some families of the dead may be afraid to claim the body of a relative.

The Medical Examiner's office identified three of the dead as Jiang Kun Lin, Ki Hop Ng and Lin Wing Ding. The bodies of Mr. Lin and Mr. Ng were released to relatives and taken to the Ng Fook funeral home on Mulberry Street, said Ellen Borakove, the spokeswoman for the Medical Examiner. Mr. Ding's body and the seven unidentified bodies remain at the Medical Examiner's office in Manhattan.

She added that because four of the bodies washed ashore more than a week after the shipwreck, they were badly decomposed and might be hard to identify without dental records.

Chinese officials insist that they cannot be sure any of the bodies belong to citizens of the People's Republic until they receive documentation.

"We have seen no photographs, and received no records," said Lin Hui-sheng, a spokesman for the Chinese Consulate. Although the issue has been discussed between Chinese and I.N.S. officials, he said, it is unclear whether the bodies will be returned to China or buried in the United States.

Immigration is part of America ...

... but we need to exercise controls

A Chinese immigrant detained in 1917 at Angel Island in San Francisco Bay scribbled a poem on the wall before he was deported. Written when Asians were barred from immigrating to America, it read:

*I was ordered departed.
When the men I was told
I was frightened and trem-
bled about returning in my
country.*



MARGARET FUNG

gratinate harks back to fears of a "yellow peril," and reinforces notions that Asians, even long-time residents, are perpetual foreigners. This fuels a cycle of discrimination that denies Asian Americans equal access to jobs, even though most come to New York legally, joining relatives and contributing work and skills to the economy.

In a time of limited economic resources, the presence of so many newcomers tests the limits of tolerance. New services are needed: with unemployment high, it's difficult to see the real pluses that are resulting from the energy and industriousness of immigrants. It is also tempting to call for closing borders, even though past efforts in control illegal immigration and protect jobs for citizens have gone awry.

In 1980, Congress for the first time enacted penalties upon employers who hire undocumented workers. The law has succeeded only in increasing discrimination against Asian and Latino workers — citizens and immigrants — by employers who hire people who "look foreign" or speak with accents.

If our elected representatives are truly concerned with the exploitation of immigrant workers, they'll repeal the quick "fix" of employer sanctions and provide resources for the enforcement of existing labor laws. This is the only solution that will help end illegal working conditions, remove incentives that contribute to the underground economies of Chinatown and other communities, and eliminate the idea that immigrants are driving down wages. Immigration is at the heart of the American experience. We must be sure this unique tradition is preserved and administered with fairness for all.

Margaret Fung is a graduate director of the American Labor Defense and Education Fund.

For those Americans who live in communities that have not been as allowed by borders of immigrants who speak little or no intelligible English, immigration is experienced mainly as a TV event. In tragedies broadcast into our homes, we see some Haitians rescued from the sea by the Coast Guard — and others ground up at Guantanamo Bay like cattle. We see Eastern Europeans fleeing ethnic wars.

And we look at the faces of the hundreds of Chinese pilgrims shipwrecked off the beach at Brevity Point, Queens.

The name of that ship captured its passengers' optimism: Golden Venture. But, as we now know, most were bound not for glory, but a life of slave labor in the sweatshops that comprise the undergrowth economy of Chinatown.



PLAYTHELL BENJAMIN

If Americans regard this and other revelations about the horrors spawned by unheeded immigration — legal and illegal — as a wake-up call, some good may come of the ordeal.

But Americans must first realize it is a myth that the U.S. can accommodate all the world's displaced. Min Liberty's famous imitation in the tired and bodified has to be regarded as poetry from an age when America seemed to have limitless potential for growth.

The American economy and the role of immigrant labor is very different today. In "The Cost of Immigration," a study released earlier this month, Donald Huddle, professor of economics at Rice University, calculated that last year the country's nearly 12 million legal immigrants cost all levels of government more than \$45 billion above and beyond the taxes they paid. After looking at 22 major cities, he came up with a surprising conclusion: that the largest public outlays for legal immigrants in 1992 were primary and secondary pub-

lic education (\$8 billion); Medicaid (\$5.7 billion); public higher education (\$2 billion); and public assistance costs for displaced American workers \$7 billion.

These figures should obliterate the fashionable arguments of those who oppose limiting immigration on the assumption that immigrants contribute more in taxes than they take in government

largesse. But the most compelling argument for radical change in immigration policy resides in projections for the future. Employing what he describes as "conservative" figures, Huddle estimates "an annual intake of 810,000 legal immigrants to the year 2002." By that year, "the stock of legal immigrants rises to 21 million. The cumulative public expenditures of this stock, net the taxes they pay, would be over \$400 billion."

Cornell University's Vernon Briggs, a leading authority on immigration and the work force, is so on the money when he says: "If we wish to avoid disaster as a society, immigration policy must be decided on the basis of the economy's needs, not special interest politics, which is the case right now."

The question is of special concern to New Yorkers because the rate of immigration here is as high as it's ever been. Supporters of an open-door policy argue that if the city absorbed waves of immigrants in the last century, it can do so again. But today's New York is a very different place. The manufacturing sector has shrunk drastically, and the economy is increasingly service-oriented.

Hence, New York no longer provides the kind of low skill, high-wage jobs that supported generations of workers — mostly white — who migrated to this city and pushed their kids into the middle class.

Just plain unfair

Furthermore, as Huddle points out, unskilled workers flooding into the country "are accustomed to labor standards that are far inferior to American standards and this results in downward pressure in the labor market." American workers should not have to compete with them.

Playthell Benjamin is a producer of the Thursday edition of WBAI's FM radio show "Talkback." He is a regular contributor to the *Manhattan Guardian*.

The vital spark

Here in the city, immigrants have also revitalized neighborhoods, including Flushing, Elmhurst, Sunset Park, Flatbush, Washington Heights and Chinatown. These new Americans have also become major forces in the health care, apparel manufacturing and restaurant industries and have created jobs for tens of thousands. Asians alone have invested in more than 25,000 small businesses over a four year period.

For Asian Americans, whose immigration was drastically curtailed by the Chinese Exclusion Act of 1882 and other racist quotas until 1965 — the Golden Venture tragedy had a special impact. Xenophobic fears of uncontrolled Asian immi-

Is it time for the U.S. to start clamping down on immigration — or is a unique tradition being undermined by bigotry?

Chinese want victims' pix

BY USA REIN
PHOTO BY SP-1 JAMES

The bodies of seven apparent victims of the ill-fated Golden Venture remained unidentified yesterday, and Chinese community leaders said they have been thwarted in attempts to locate family members.

Neither the federal Immigration and Naturalization Service nor the city medical examiner would release to the public the victims' photographs, which community leaders hoped to send to China, where relatives or friends might be able to identify them. "We feel the American government has no humanity at all," said William Chin, who heads a Fujian-American

Seek Golden Venture I.D.s

business group in Chinatown. "These are not dogs or animals."

INS officials last week began circulating photos of the drowned passengers to the nearly 300 illegal immigrants who survived the grounding of the smuggling ship off Queens on June 6, but so far no one has been identified, officials said.

The survivors are being detained in Virginia and Pennsylvania. Chief Medical Examiner Charles Hirsch said he cannot release the photos to the public but that he thinks federal officials should provide them to Chinese authorities.

He said photos could be faxed to big cities and then to villages in China.

The Asian-American Legal Defense and Education Fund has asked the INS to supply a list of survivors, to enable relatives to identify the dead from those whose names were not listed.

But the INS will not release the names either, because the confidentiality of those seeking asylum would be violated, agency spokeswoman Rose LaGuardia said.

At least 10 people were believed to have died after the Golden Venture ran aground. A second body was released from the city morgue to an acquaintance this week, and a third is to be released next week, officials said.

"I sympathize with them (the community leaders) entirely, but I'd be afraid of some lurid photo display," Hirsch said.

Identification is complicated because the U.S. does not keep fingerprints from foreign countries, and "we have nothing to match X-rays and dental records to," said Ellen Borakove, a spokeswoman for the medical examiner.

'Very offensive'

Jackson Chin, an attorney for the Center for Immigrants, called the delay in identification "very offensive."

Saturday, June 12, 1993 • DAILY NEWS

SOS for detainees

By PATRICE O'DONNELL
and DEAN CHANG
Daily News Staff Writers

Kin: Told to refuse aid

The Fuk Ching gang's stranglehold over the nearly 300 Chinese aliens who washed ashore in Queens on Sunday is so tight that it extends to the detention centers where the refugees are being held.

According to relatives who visited refugees at the detention center on Varick St. in lower Manhattan, the aliens are under orders to refuse any outside offers to pursue their release.

The smugglers, known as snakeheads, would eventually send their own lawyers to

represent the aliens in any asylum hearing, and they would post bond to secure their release into the smugglers' hands, said the relatives, who requested anonymity.

If the detainees disobey the orders, members of the gang have threatened to harm their relatives back home in Fujian Province.

"People don't understand. Even when they're free, they're never free," said a source close to the relatives.

In recent days, immigration lawyers and human-rights activists

have blasted the Immigration and Naturalization Service for reportedly denying them access to the detainees.

INS officials have denied the allegation, insisting that they have given the aliens every opportunity to request a lawyer. But because of the snakeheads' threats, the aliens have refused.

"It's plausible," said Stanley Mark of the Asian American Legal Defense and Education Fund.

A similar smuggling operation involving aliens from Fu-

jian Province occurred in San Francisco, said Mark. A humanitarian group, the Asian Law Caucus, offered free legal help, but they were turned down in favor of a New York lawyer who represented the entire group.

"We can't force someone to get representation if they don't want it," said Jim Haggerty, an immigration lawyer who is spearheading a coalition of eight legal advocacy groups willing to represent the detainees.

Meanwhile, the search for Ah Kay, reputed leader of the Fuk Ching gang who allegedly masterminded the Golden Venture smuggling attempt, intensified yesterday.

Investigators hoped to catch a glimpse of Ah Kay, whose real name is Guo Liang Chi, 27, at the Chinatown funeral of his two brothers and two other gang members who were killed May 24 in a Teaneck, N.J. shootout, reportedly over the proceeds of immigrant smuggling.

The last time police had any contact with Ah Kay was about four months ago, when they brought him in for questioning in connection with a kidnapping, said a police source.

About 40 members of the gang, wearing sunglasses and black double-breasted suits, turned out for the services at the Hong Kong Funeral Home on Canal St. Ah Kay did not attend.

— Staff Writer Michael Allen
Contributed to this report

Crime, Exploitation Ride Wave of Chinese Immigration

By Malcolm Gladwell
and Rachel E. Sussman-Berger
Washington Post Staff Writers

NEW YORK—If it were only about men and women seeking a better life, the sudden influx of Chinese undocumented immigrants here would be easily understood. It would be like every previous wave of immigration, like the millions who came through Ellis Island from Europe or the thousands who crossed into Texas and California from Mexico every year.

But why hundreds of Chinese washed up on a New York City beach last week and tens of thousands have come here illegally in recent years is much more complicated than the typical immigrant's tale.

Experts say specific U.S. policies have turned the ocean between China and New York into a kind of human highway, creating special incentives for Chinese to come illegally and for businesses in New York's Chinatown to support the practice.

Look at U.S. immigration and labor laws, they said, to see why the influx from China's coastal Fujian Province is happening now and in such numbers. Look also, they said, to see that stopping the tide and ending exploitation of immigrants by the smugglers who bring them to America will not be easy.

Foremost behind the current wave is the fact that, in recent years, Chinese have been able to become legal residents by winning political asylum far more easily than aliens from other countries.

Under U.S. law, anyone who enters the country illegally and is caught or surrenders willingly can stay and gain legal status if he or she can prove political persecution in their native land.

Some Chinese smuggled into the United States in the last three years surrendered to the Immigration and Naturalization Service (INS) and won political asylum because of China's crackdown on political dissidents after the bloody demonstration in Beijing's Tiananmen Square in June 1989.

More important, however, is a 1990 directive that was written by Grover Rees III, the INS general counsel in the Bush administration, which expanded the definition of political persecution to include anyone adversely affected by any kind of forced family-planning policy.

Undocumented immigrants are eligible for asylum, Rees wrote, if they can show "that it is more likely than not that they will be forced to abort a pregnancy or to undergo involuntary sterilization or will be persecuted for failure of refusal to do so."

Rees's ruling clearly referred to the Chinese government policy of forcibly limiting families to one child and, in effect, makes any refusal of the Chinese a potential political refuge, immigration lawyers said.

Because of this expanded definition, political asylum was granted last year to about 85 percent of Chinese undocumented immigrants who requested it, a rate almost three times higher than that for immigrants from other countries.

"People mortgage themselves to get here, knowing that the one child per family rule works as a trump card," said David Stein, executive director of the Federation of Americans for Immigration Reform.

The 85 percent success rate is for those people who have argued to immigrants legally and take up residence and who then come for a reward to change their status or are caught. Those "self-deporting" to the country, such as the 300 Chinese passengers of the freighter Golden Venture that ran aground here June 6, are called "exclusion cases" and have far fewer legal ways to resist deportation. Even Chinese aliens who fall into the exclusion category, however, have been winning asylum cases at a significant rate, officials said.

"I think it's fair to say from past experience that about a third of those on the freighter are likely to gain asylum," said Arthur Helton, executive director of the Lawyer's Committee on Human Rights in New York. Even a failed asylum request, however, does not mean that a Chinese smuggled into America must return home.

Both exclusion and asylum cases and people already in the country have multiple levels of appeal available to them, all of which rest often vanish into Chinatown, they said.

Although those aboard the Golden Venture, for example, were arrested in the act of immigrating illegally, they cannot simply be sent directly back home. First, all must go before an immigration judge for an "exclusion hearing," a process that INS officials said could take

between four and six months. At that point, all are likely to request political asylum, requiring further hearings.

If things were normal, they will be calendared another year to 14 months down the line, INS spokesman Dale Austin said. The delay, he said, is because the INS has a backlog of 250,000 asylum cases.

Those who lose an asylum case can appeal to an INS board that also has a backlog, sometimes exceeding a year. Still, unsuccessful applicants conceivably can file a third appeal.

While this administrative process drags on, the INS is authorized to detain undocumented aliens. That is what INS officials initially said would happen with the 300 people aboard the Golden Venture.

Last Thursday, however, four of them were freed, and other releases appeared imminent because the INS has only 500 beds here to hold aliens. All are full, so the agency must undertake the expensive process of contracting with detention centers nationwide in order to detain a large group of aliens for more than a few weeks.

Almost all Chinese smuggled into the United States, immigration officials said, stay here to live and work. Many apply for immigration hearings and seek asylum while the rest often vanish into Chinatown.

"It's very hard to keep track of these people," said Luke Retler, the prosecutor who heads the Asian Gang Unit in the Manhattan district attorney's office. They are nameless, faceless people. They might as well come from another planet, need not be paid the minimum

They have no paperwork. They have no legal records. They just disappear.

In the last three years, the INS has managed to deport only 190 of the tens of thousands of Chinese undocumented immigrants.

Labor laws create strong incentives for Chinatown businesses to hire smuggled aliens or sponsor smuggling operations. Facing the situation is a shortage of unskilled labor in Chinatown, in part because of recent changes in immigration laws that have made it increasingly difficult for unskilled laborers to immigrate legally.

"Whether people want to believe it or not, there are a lot of jobs here, jobs that other people won't take," said Stanley Mark, program director of the Asian American Legal Defense and Education Fund in New York. "I abhor this whole idea of organized crime. But the reason why there is such a need for organized crime to do this [smuggling] is because of the unmet need of employers who need labor."

Forty-two Chinese immigrants found locked in a Brooklyn basement last week, for example, were taken daily to work in laundromats, restaurants and garment firms. Another smuggling case brought to light here last year involved a Chinese business executive who was paid part-owner of four Chinese restaurants in Manhattan and tried to illegally bring 150 immigrants here by boat, apparently to work in local restaurants.

Employing undocumented immigrants is attractive because they need not be paid the minimum

wage. According to Wing Lam of the Chinese Staff and Worker's Association in Manhattan, this is the result of a 1986 immigration law that made it illegal for employers to hire anyone without work papers. In effect, Lam said, the law limits undocumented workers to jobs in the underground economy, where they can be paid subsistence wages and forced to work in sweatshop conditions under threat of being reported to the INS.

"The law encourages employers to keep those [undocumented] people under control," Lam said.

Last week, at a Chinatown meeting sponsored by a coalition of community groups, one undocumented young waiter said his boss threatened to have him killed by an Asian gang because he asked to be paid more than 70 cents an hour. After working at the restaurant for almost six years, he said, he was fired six months ago.

"I'm in a dangerous situation now . . . I am afraid they will retaliate," he said. "When I walk the street, I look back, watching for the gang If I had the money, I'd go back."

Mr. MAZZOLI. Some very interesting suggestions, Ms. Lee, with the factfinding trip that you propose and then Mr. Mark with the idea of expanding the Legal Immigration Commission.

Mr. Mark, help me a little bit. I have heard that in fact a lot of the Chinese that have come in, maybe not the most recent, came out to San Francisco on the *Golden Venture* in New York, but that at least a lot of the people from the Peoples Republic who are here illegally in fact do not work in sweatshops and do not earn less than the minimum.

Can you tell me, is there any mythology at all in the situation of how the people are working? And let me just add one little fragment to it. How many U.S. citizens who are of Chinese extraction are in settings in which they are being exploited, they are, in fact, being paid less than minimum, they are, in fact, in unsafe conditions and doing more work than the law says that they should? So how much of this thing is—

Mr. MARK. I think there is an undercurrent in the way the media plays up Asian-Americans generally, in this instance Chinese, as being very, very successful. There is some data to support the idea that there are very highly educated folks in the Asian-American community and particularly the Chinese community as well.

However, there is also on the other end, a high percentage of people who are garment and restaurant workers, or unskilled workers or street vendors, et cetera. I would say the last figures I saw at least in New York City, about 23 or 25 percent of the Chinese population in metropolitan New York is in the service industries and these folks are working in really substandard conditions well below minimum wage.

The figure is probably a lot higher. As to your first question about the PRC individuals who are here, I think there is a scope of people, a range of people. Although I am not at liberty to discuss my cases, I can say that none of these folks that we have interviewed from the *Golden Venture*, come from very wealthy backgrounds or have higher education.

Although I think two or more of those interviewed are educated well enough and well versed. Some of the folks are actually illiterate in Chinese as well. So there is a range of people, and I would say that there may be people who are from PRC who are not working and come from the very educated class. Maybe they have had background or skills or whatever that they bring with them.

Mr. MAZZOLI. I am not so much thinking about doctors and lawyers and people who have advanced degrees and that sort of thing who come in illegally from PRC and what happens to them.

I am thinking more about the illegal trade in human beings, who wind up working in New York City or in San Francisco or someplace but not working at subminimum, not working in what would be called unsafe conditions.

Mr. MARK. I have not heard of that. I mean, the—I am not sure if it is mythology, but most of the people, that I am aware of, and for people who work in this area, I don't think that is true.

Mr. MAZZOLI. It is your judgment and your experience that they are being exploited?

Mr. MARK. Oh, yes, I think it is accurate to say that.

Mr. MAZZOLI. They in fact are not being paid what they should be paid. They are put into settings and working conditions that would be impossible and unsafe?

Mr. MARK. People are being sold.

Mr. MAZZOLI. Ms. Lee, have you some information from the other coast? I mean, what is your experience? It is illegal for an employer to knowingly hire someone who is here without proper work documents.

So they should certainly be busted. The question I have is, how many of the people from PRC who have come in illegally wind up working for what an American counterpart of Asian or Chinese descent is earning? And in effect, they are paid at whatever the community rates are, but they are not being paid illegally.

So if we did, and I think we should, beef up the Labor Department, they could do nothing about that because these people are being paid. Now, they turn that employer into the Immigration Service or in that corelationship that labor and INS have they could cite employers for paperwork violations or whatever, but I am just curious.

How much is being done illegally in the sense of being—of sweatshops?

Ms. LEE. Well, in San Francisco we have only started to see the aliens from PRC coming into the west coast during the last year. Actually it started in about a year-and-a-half ago.

Many of them are involved with low wage jobs, such as sweatshops and what have you, and one of the things that we—

Mr. MAZZOLI. Low wage is not necessarily illegally low wage, you understand? Low wage is like Mr. Marks said, the 25 percent are in service and that is not a high paying industry.

What I am really curious about is how many of these people are working in what I would call sweatshops, which is to say, working at illegally low standards.

Mr. MARK. Maybe if I could just frame it a little differently. What we have in New York is a spot market. There is always these ideas of, you know, how employers leave the area and go to the South or out of the country for low wages.

New York's garment industry is smaller than it was, but it is stabilized primarily because the uptown stores like Macys or big department stores sometimes need a run of clothing very quickly in sportswear. So instead of sending it out of State or whatever, they go to Chinatown and get it done very quickly.

What they set off in terms of a dynamic is very strong competition among people who are—they have been workers maybe a year ago who have saved some capital and invested in a few sewing machines. So you have a cutthroat type of competition and what happens in many instances, and I would say in the last 2 years, is you find people getting into contracts that they really shouldn't be getting into with manufacturers, and then hiring workers, and then not paying them at all.

But in most instances I would say there is an underclass of people who are working and expanding the underground economy, as our overall economy is retrenching in a recession. There is actually growth in the underground economy.

Most of the folks in the community in Chinatown are under-employed. In fact in that you have both parents working in those industries, as well as children, and although their median income or family income might be slightly higher than the average family in the United States, in fact their per capita income is lower than average in that they have a poverty rate greater than the average rate in the United States.

So you really do have an underclass of people. You have a group of people who are working at really subsistence wages below the minimum wage.

Mr. MAZZOLI. What I am really trying to figure out is how best to enforce the law, because if, in fact, the Labor Department is really not going to be much help because, if, in fact, these people are working at what we would call legal jobs and—

Mr. MARK. See, I have a problem.

Mr. MAZZOLI. We have to think of this as more of an immigration problem.

Mr. MARK. I really think that there is a problem with the mission more of the Department of Labor and its cooperation with the INS. I have a problem with that because on one hand you have the INS enforcing the immigration laws which include, you know, checking people's ID's, et cetera, perhaps arresting them, et cetera, and then you have on the other hand the Department of Labor, which has a mission to enforce minimum wage laws and other labor laws, which include in their jurisdiction undocumented aliens as well as citizens and permanent residents, et cetera.

So we shouldn't have the Department of Labor doing enforcement of employer sanctions or cooperating with the INS to that degree, because then you are discouraging the few people who have the nerve to stand up to employers and say that they want to be paid the minimum wage.

We do have people who are doing that more often now in a community than ever before, but there is still the fear that employers will call in the INS to break up any organizing drive in that particular shop or restaurant, and in addition, when you have employer sanctions, I think the ironic effect is that instead of deterring unscrupulous employers it doesn't really matter to them.

They are not going to follow any law like employer sanctions and it actually works to their benefit because it cuts down the mobility of workers who can't go from that particular employer to somebody else and they are stuck in that kind of a position and will be exploited to, you know, to the fullest.

Mr. MAZZOLI. It is a difficult situation. There really are two different agencies of government with two very different missions and yet they come together in this situation involving employer sanctions and workplace matters.

Well, anyway, I thank you very much.

Ms. LEE. And, Mr. Chairman, can I just add one more thing? This is something that just came up from San Francisco recently. I think people had always assumed that people found jobs in the Chinatown areas where they can fit in and what have you.

But in a lot of cases, the employers were forced to hire these individuals because it is another form of extortion.

So you also need to look at the employers as a victim of this whole process, because it is not that they are willingly hiring people for below wages. They may be forced by the organized smugglers.

Mr. MAZZOLI. The syndicate part of that is interesting. That is a good point.

The gentleman from California.

Mr. BECCERA. Thank you, Mr. Chairman.

And thank you to the two—actually to the three of you for your testimony. I asked Mr. Der before he had to run off what his thoughts were with regard to the process—the adjudicatory process in our asylum hearings. And I asked him about: One, the standard of proof that would be required to substantiate a claim for asylum; and, two, the review process, any type of appeal that might be granted to an asylum-seeker.

Do you have any thoughts on, if we should change the standard of proof, what it should be, and if we should change the appeals process, the review process, and what it should be?

Mr. MARK. I think the paramount concern is to make sure folks who do have valid claims are protected. And I believe the standard is proper and should not be changed.

I don't think we should tamper with the level of documentation nor should we adjust the process itself, but to speed up the process and clean it up administratively and streamline it.

We must have a right to counsel, you must have review beyond the initial evaluation. And I believe that the main problem is we need more resources in order to expedite these matters.

Mr. BECCERA. In expediting the process, how much faster? What would satisfy the advocates of the asylum-seekers.

Mr. MARK. I guess you would get a range of answers. I think it is relative to different parts of the country maybe even.

But my feeling is that there has to be an increase in the budget and an increasing numbers of people who make these adjudication determinations. Once that is taken care of, the speed itself will be secondary. I think if that effort is made, most folks who work in that area will be satisfied.

Maybe there will always be people who will not be satisfied, but I think that effort will help change people's minds about the process. Yes.

Mr. BECCERA. Ms. Lee, do you have any comments on that?

Ms. LEE. No. I would agree with his comments.

Mr. BECCERA. The question regarding the upsurge, if it has been an upsurge, in the number of immigrants from China—

Mr. MAZZOLI. Before the gentleman proceeds can I piggyback on your question?

If I could ask these good people, going back to what Mr. Beccera says about speeding up the process, which we need, and we are probably going to have to eventually have hundreds of asylum-trained investigators, the question I would have to piggyback is: How do we realistically assure these people who will show up for the process, because one of the problems—why you saw all of the ones who drop out at different stages of the game and the likelihood is the ones who have the less good cases will be the ones to drop out and just take their chances out in the streets.

The question is: Is there something you would be able to offer us today or in writing as to how we can responsibly, without detaining people—except in the most extraordinary of circumstances—how can we guarantee they will show up once they are into this process?

Mr. MARK. Well, this is not a copout, but in my written statement—I indicated we would submit more detailed comments with our colleagues on the west coast. But my general impression is that there will always be some holes. However, I think there are ways to speed up the process and make sure that there is a proper adjudication very quickly.

My initial impression is to look at it more as a administrative problem and not necessarily a substantive problem. Those kinds of abuses or gaps that you are implying are perhaps examples of why the main part of the asylum systems themselves should be changed. Or it causes—you to look at the standard and change it. And I would not want to take that kind of perspective.

I would just say that, yes, there are these problems. But, again, you have to look at the overall numbers. And I know the numbers sound astronomical. But if you look from the standpoint of the Chinese who are coming into the country, there are, like, 239,000 Chinese according to the census in New York and probably 1 million Chinese in the United States, I believe, 2.9 million Asian-Americans, including Chinese.

So if you look at the point of entry, I don't mean to be cavalier about this matter, but you have 300 people more coming in, it is not a big deal. But I know the bigger policy problems and the structural problems that are behind it. But from our perspective, it is not a large number.

Mr. MAZZOLI. I would just settle at this point. And I will give you, Xavier, more time. But the data we had this morning with regard to affirmative asylum cases, those cases brought before the INS and before their asylum officers, the 330 cases—and I think they used last year, 1992—of the 330 cases brought, 193 failed to show up at some stage, which left a total of whatever.

Mr. MARK. I may be mistaken. Arthur Helton once said there were 250,000 cases total.

Mr. MAZZOLI. Let me just finish for 1 second.

As I say, of the 330 cases, roughly 250 failed to show up at some stage. And of the ones that were brought before the immigration judges, which are part of Justice, of the 1,500 cases that they tracked, one-third, over 500, failed to show up; and then they had a grant and denial rate thereafter.

So I think that, as we talk about what Xavier was talking about, some kind of speedier process, which we think is certainly feasible, though it may cost some money, we have to figure out some way to responsibly not have, in one case, two-thirds and in one case one-third of cases drop off.

Ms. LEE. Mr. Chairman, I think one of the reasons why they have such a high no-show rate could be that they are unable, physically, to show up. And I think that for our experience, for people who have legitimate claims, they got to show up and get legitimacy in this country because they do have families back in China where they want to bring them over.

So there is a great incentive for them to show up for the hearing. However, if you are unable, if someone is preventing you from coming, then you have a very high no-show rate. It doesn't mean that they are not going to show up. It is just that they cannot show up.

Mr. BECCERA. You make an excellent point on that. And I wish there was a way to get some information or documentation of that. But I guess the only way to do that is to apprehend the people who are holding these people hostage to some degree.

Mr. MAZZOLI. We can certainly ask. I am not sure we have as much documentation as we should have.

Mr. BECCERA. That would be something we should really try to examine because there probably are people who have a valid claim to asylum who are being held. And if not that—or at least we might be able to save them from their circumstances of being virtually slaves.

I would ask, Mr. Mark, when you do submit your written testimony—because this, I think is an issue with regard to the no-show rate, I think it is an issue this committee would like to be able to address, and I think that is the reason you see us talking so much about trying to expedite the review process—if you could try to address that to some degree, I would appreciate it. Because I am one who has a concern in expediting too much and denying valid claims. But I also believe that we have to expedite because there is no way we can continue with the current process given the number of no shows, given some of the problems that we have seen.

It would help, especially to have the advocates who represent a lot of these people who make the claims for asylum, to explain what you believe would be a proper amount of time to provide for a review of a case. I think that is essential, because oftentimes we hear from the academics, we hear from government officials; but we sometimes don't get a very indepth analyses by those who represent the people that are truly seeking the asylum. So I would appreciate it if you could give us some indepth comment on that particular issue.

Let me ask about the cases of asylum themselves. You mentioned earlier, Mr. Mark, that the number of people seeking asylum relative to the number of immigrants or recent immigrants, Chinese immigrants or Asian-American immigrants is very small.

Do you have any perspective on how big a problem or—

Mr. MARK. Two hundred fifty thousand cases here. That is a staggering number.

Mr. BECCERA. Let me finish the question. What I want to get a better feel for is just how big a problem this really is. The newspapers, television, media, all the media, really have seized on this issue and talk about the new wave of undocumented immigrants and the new wave of smuggling now human cargo versus contraband.

I think it has always gone on. It is just, perhaps, we have just discovered it and it has accelerated some. I don't know if either of you have any idea of how much worse it is than it was before with regard to the Chinese immigrants; but, if you can, comment on that.

Mr. MARK. My main concern, given all the press and high profile nature of this matter, the anti-immigrant backlash, which has been building in our country for a while, is recurring.

It is a cycle that has occurred in the 1880's when the first Chinese Exclusion Act occurred. It seems to run with our economic ills and recessions. And I think at this point in time, this kind of, perhaps, undercurrent of nativism is rearing its ugly head again.

And from an Asian perspective and Chinese-American perspective, we are afraid of this image of Yellow Peril or the hordes are coming from Asia, it is a type of mentality which is easy to fall into. And we have seen it in the 1940's when Japanese-Americans were stigmatized as disloyal. And there is certainly a concern in all our Asian communities that perhaps this wave of smuggling, or whatever, is identified or stigmatizing our community as being all part of organized crime.

I had the misfortune of being asked on a national TV broadcast why the INS or local enforcement couldn't just go into Chinatown and round up all the delivery boys and deport them. And that is a shocker to me—it stunned me for a moment. I cut the person off and explained to them that not everybody in the community is an undocumented alien. From the community and from our law office, that is what we are trying to deal with every day. That while we have these immense problems in our immigration system, there is a certain price to be paid when problems get promoted in a way that brings on a scare or a hysteria that our streets are being overwhelmed by Asians or Chinese. And we have to deal with that. It is unfortunate.

So I guess the point I want to make is when we talk about immigration reform, my perspective is we know where immigration laws have led Asian-Americans in the past. And we are very concerned that these laws don't go back and revisit some of the more restrictive and also openly racist types of policies. It is a concern that most of us share in the community.

So with the current debate we would like to keep it at a level where we are not saying—I am not criticizing Congressman Schumer, but I have heard him saying—I think he was playing the devil's advocate, but he said something to the effect there are one billion persons in China—it is actually 1.1—and everybody there is entitled to political asylum.

This one-child policy, revisits this whole image about the Yellow Peril and the hordes from Asia are coming over here. That is true of any political asylum claim from anywhere. Anybody in a country that is run by a government that is totalitarian or persecuting its people. Everybody in Haiti, practically is entitled to asylum, I think, and perhaps in other countries.

So why are people thinking that way? Why are people suggesting those kinds of hyperbole?

Those are the kinds of issues that I think are not so easily addressed from my perspective and how to address that is a difficult problem every day for myself and people in my community.

Mr. BECCERA. Thank you.

Thank you, Mr. Chairman.

Mr. MAZZOLI. That was eloquent. That really was. I think that pretty well sets the case, and we certainly must guard against all

of these apocalyptic statements coming out now about the end of the world is near and everything. And it is not, and it won't be. And our task, of course, is to craft something which recognizes the problems and does many of the things my friend from California has said about expediting the process while maintaining its due process.

Having said that, thank you all very much. And I really appreciate your patience. What is it now? 5:25 for Pete's sake, and you might have come here at 10 o'clock in the morning. But we do appreciate your patience and your willingness to hear us out.

Mr. MARK. I appreciated the opportunity to testify.

Mr. MAZZOLI. Thank you. Have a good day.

[Whereupon, at 5:25 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—LETTER DATED JULY 31, 1993, FROM BILL FRELICK,
EDITOR, REFUGEE REPORTS, TO CHRIS SALE, ACTING
COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Refugee Reports

1025 Vermont Avenue, N.W., Suite 920 Tel: (202) 347-3507
Washington, D.C. 20005 Fax: (202) 347-3418

RECEIVED

JUL 31, 1993 JUL 6 1993

Chris Sale
Acting Commissioner
Immigration and Naturalization Service
425 Eye St., NW
Washington, DC 20536

IMMIGRATION

Dear Ms. Sale:

Yesterday, before the House Subcommittee on International Law, Immigration and Refugees you stated that 173 affirmative asylum applications were granted for Chinese in FY 92 and 59 denied, for an approval rate of 75 percent.

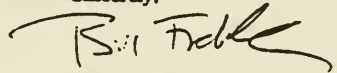
I am writing because these figures are in marked variance to the ones provided to our office by the Asylum Division of the INS in a document entitled "FY 1992 Statistical Package Asylum Data by Nationality." Page 1 of the section entitled "FY 1992 Asylum Office Workload by Nationality" shows that 241 cases were granted and 43 denied during the year for an approval rate of 84.86 percent.

As we have done every year since the mid-1980s, we published these statistics in *Refugee Reports*. A copy is enclosed. Those statistics are widely cited by policy makers and advocates as the factual basis for discussing asylum policy. Introducing these new statistics--which led Rep. Mazzoli to call the 85 percent figure a "myth"--undermines our credibility. I would submit that it seriously undermines your credibility as well.

While it is conceivable that late reporting could result in statistical adjustments, showing larger numbers of cases granted or denied, it is not plausible that late reporting would result in significantly fewer reported cases granted. How is it possible that the INS November 1992 report for FY 1992 says that 241 cases were granted, yet seven months later you can report to Congress that 173 cases were granted? Are you saying that 68 cases that were recorded as granted at the end of the fiscal year were never actually granted?

We would greatly appreciate it if you could clarify the discrepancy in the statistics presented by your agency.

Sincerely,



Bill Frellick
Editor

cc: Rep. Romano L. Mazzoli

APPENDIX 2.—U.S. DEPARTMENT OF STATE RESPONSES TO QUESTIONS
SUBMITTED BY REPRESENTATIVE FISH

Q: Are many boats used in alien smuggling decommissioned Taiwanese and Japanese drift net boats?

A: Many of the smuggling vessels that have been intercepted have been former Taiwanese drift net fishing vessels. A far smaller number appear to have been former Japanese fishing vessels. Lately, the smugglers appear to be using larger retrofitted cargo vessels which can carry more passengers than former fishing vessels.

Q: Are boats used in alien smuggling registered mainly in Panama, Honduras and Liberia?

A: Many of the intercepted smuggling vessels have been registered in Honduras. Many have also been registered in Taiwan. Other vessels that were involved in smuggling incidents have been registered in Panama, Belize and St. Vincent. No vessels that have been intercepted have had Liberian registry at the time of interception.

Q: What agreements have been reached with countries of registry to take responsibility for interdicted ships and their cargo of aliens?

A: Demarches have been delivered by our Embassies to flag states whose vessels have been or may be involved in the smuggling of aliens, and to other states which may reprovision or be otherwise involved in alien smuggling operations.

We have requested their cooperation in identifying and monitoring suspect vessels; denying flagging to ships and licensing to masters actually involved in alien smuggling; facilitating the stopping, boarding and searching at sea of their flag vessels that are suspected of alien smuggling; receiving their ships and smuggled aliens apprehended on the high seas; exchanging criminal alien smuggling intelligence information; and criminalizing alien smuggling.

We have approached flag states and port states that are signatory to the Safety of Life at Sea (SOLAS) Convention 74/78 and requested that they fulfill their responsibilities under that convention.

Q: How successful have we been?

A: We have had positive responses and received substantive cooperation from China as well as from several flag states and transit states, and discussions are continuing. Countries are exchanging more information with us and devoting additional resources to stopping the criminal traffic in economic migrants.

Q: What efforts have been made to obtain Chinese assistance in stopping departures? What success have we had?

A: We have had several meetings with Chinese officials, most recently on August 4, concerning alien smuggling. We have agreed to continue our discussions. The Chinese response has been positive and has emphasized Chinese-American cooperation to solve the problem.

China appears to be taking active measures to punish alien smugglers and to stop the illegal departures of economic migrants. We have received reports that China recently convicted some alien smugglers. In addition, we have learned that ten Fujian officials have been expelled from the Communist Party for their roles in alien smuggling operations, nine were fired from government jobs, and 13 others are under investigation for their involvement in assisting the illegal departure of persons from the PRC. In Chengde County, Fujian Province, 11 organizers ("snakeheads") have been arrested and coastal patrols have been increased.

APPENDIX 3.—STATEMENT OF THE NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM

INTRODUCTION

Mr. Chairman, thank you for allowing the National Asian Pacific American Legal Consortium to submit this testimony on the impact of the various proposals regarding smuggling, summary exclusion and asylum reforms. Stanley Mark, program director of the Asian American Legal Defense and Education Fund testified on June 30, 1993 before this committee and described the conditions in New York. During his testimony he informed the committee that NAPALC would be submitting this testimony to address the above proposals. We appreciate this opportunity.

This written testimony is submitted on behalf of the National Asian Pacific American Legal Consortium, a joint project of the Asian American Legal Defense and Education Fund (New York), the Asian Law Caucus (San Francisco), and the Asian Pacific American Legal Center of Southern California (Los Angeles). These three organizations have a combined history of over 50 years of service to and advocacy on behalf of the Asian Pacific American community.

Since late 1992, our nation has experienced the arrival of several boats carrying hundreds of Chinese nationals seeking to land in the United States. The conditions they faced in their treacherous journey have included poorly equipped boats, poor sanitary conditions, and maltreatment at the hands of those who seek to profit from smuggling. Their only hope is that hard work will eventually lead to financial success and a better life for themselves and their loved ones. Their desperation can only reflect the conditions that they also flee: a nation with a human

rights record resoundingly condemned by the United States and human rights organizations, severely limited economic opportunities, and no democracy.

While many in the United States have jumped on the bandwagon to clamor for immigration reforms by utilizing these recent events, we specifically caution against hastily drawn measures that not only deter the recent waves, but may, under the pretext of "getting tough on smugglers" deter many more who are legitimate asylum seekers. We note that 1993 is the 50th Anniversary of the repeal of the Chinese Exclusion Act - an Act passed as a response to racist and xenophobic attitudes among white workers and white lawmakers that saw Chinese workers as the source of economic problems in California from the 1870's through the 1890's. This country's summary treatment of humans by race in the immigration context over the past 110 years must not be forgotten as Congress again attempts to seek and implement short-sighted solutions to the long term issues, many of which are rooted in the global economic downturns and the lack of democracy abroad.

This testimony addresses the various proposals to reform current immigration laws and responds to the problem of smuggling and alleged abuses of the political asylum process. Two days after the hearing on this matter, H.R. 2602, the "Immigration Enforcement and Asylum Reform Act of 1993" was introduced. This testimony addresses in part the measures outlined in H.R. 2602 and the recently reported proposal of the Administration which is to be introduced as the "Expedited Exclusion and Asylum Reform Act of

1993".¹ We reserve the opportunity to address these bills more fully when they are scheduled for hearing in the subcommittee.

I. DISCRIMINATORY IMMIGRATION LAWS AND THE ASIAN PACIFIC AMERICAN COMMUNITY

An examination of current proposals and their particular impact on the Asian Pacific American community requires a review of the immigration history that Asian Pacific Americans have experienced. That history is, unfortunately, overridingly marked by a policy of racism, and prompts to warn Congress to proceed with caution in changing existing policies.

The Asian Pacific American community was the first target of explicitly racialized immigration policies.² The first of these laws, the Chinese Exclusion Act of 1882 (suspending immigration of Chinese laborers for 10 years)³, was extended in 1892 and 1902, and in 1904 was extended indefinitely.⁴ That same measure declared Chinese ineligible for naturalization.

Japanese immigration was subsequently curtailed by the

¹ "White House Preparing Tough Smuggling Plan", San Francisco Chronicle, July 21, 1993, p. 1.

² The period surrounding the Chinese Exclusion Act and other anti-Asian immigration laws is described in The Tarnished Golden Door: Civil Rights Issues in Immigration, a Report of the United States Commission on Civil Rights (1980), p. 8-19.

³ Ch. 126, 22 Stats. 58 (1881)

⁴ see fn. 2 The law was finally repealed in 1943 (Ch. 344, 57 Stat. 600 (1943)), but only 105 Chinese were permitted to immigrate to the U.S. annually.

Gentlemen's Agreement of 1907.⁵ Congress further restricted Asian immigration through the Immigration Act of 1917⁶ (passed over the veto of President Woodrow Wilson) which among other things created "the Asia-Pacific Triangle", an Asiatic barred zone, designed to exclude Asians completely from immigration to the United States.⁷

Congress passed a series of racially-based restrictions on immigration, culminating in the national origins quota system.⁸ The 1924 Immigration Act⁹ maintained the 1921 act's system, and barred all aliens ineligible for citizenship from entering the United States. Since the United States Supreme Court had declared Japanese ineligible for citizenship in 1922¹⁰, this latter provision slammed the door on Japanese immigration. The 1924 act, however, permitted natives of the Western Hemisphere to enter without numerical limitation.

The Philippine Independence Act of 1934 (Tydings-McDuffie Act) stripped Filipinos of their status as noncitizen nationals of the United States and regarded them as aliens for most purposes under

⁵. U.S. Department of State, Paper Relating to the Foreign Relations of the United States 1924 (1939), Vol. 2, p. 339.

⁶. Act of Feb. 5, 1917, 39 Stat. 874

⁷. see fn. 2

⁸. Quota Law of 1921, Act of May 9, 1921, 42 Stat. 5

⁹. Act of May 24, 1934, 43 Stat. 153

¹⁰. Ozawa v. United States, 1260 U.S. 178 (1922) [Japanese ineligible to become naturalized citizens since Congress had restricted eligibility for naturalization to free white persons (ch.3, 1 Stat., 103 (1790)) and to persons of African nativity or descent (Rev. Sta. Sec. 2169) (1875). See, Tarnished Golden Door, at 10, fn. 38.

the immigration laws.¹¹ That same act also limited Filipino immigration to 50 per year, thereby effectively operating as an exclusion act. This was eventually raised to a statistically insignificant 100 per year through the War Brides Act of 1945.¹²

Subsequent legislation did little to overcome the inherently racist and discriminatory barriers established by Congress. While the McCarran-Walter Act of 1952¹³ (passed over the veto of President Truman) allegedly removed race as a factor in admissions¹⁴, the Act failed to remove the national origin quota system.¹⁵

"The long term consequence of these restrictive immigration measures was to end more than one hundred years of virtually unimpeded immigration into the United States. Only one-half million immigrated to the United States between 1931 and 1940, compared with 8.8 million arriving between 1901 and 1910, and 5.7 million between 1911 and 1920 (largely from Western Europe)."¹⁶

Thus, this country's immigration laws for over 80 years explicitly excluded persons of Asian ancestry, and effectively

¹¹. Gordon and Rosenfield, Immigration Law and Procedure, Sec. 4.5d. (1986)

¹². Ch. 591, 59 Stat. 659 (1945)

¹³. Ch. 477, 66 Stat. 163 (1952)

¹⁴. Tarnished Golden Door, supra, 11

¹⁵. Gordon and Mailman, supra, 2-9.

¹⁶. National Lawyers Guild, Immigration Law and Defense, Sec. 2.3, at 2-4, 2-5, citing Immigration and Naturalization Service, 1975 Annual Report, p. 31. (emphasis added)

denied them opportunities in this country while Western Europeans were allowed nearly unfettered entry. It simply is no accident then that while persons of Asian descent constitute 50% of the world's population, they are less than 1% of the United States population. Congress should not allow the immigration laws to once again serve as the vehicle to deny employment and other opportunities to Asians and other affected minorities. Nor should Congress be guided by anti-foreign prejudices that have resounded through this country and Europe in recent times. In a year when this nation is commemorating the 50th Anniversary of the the repeal of the Chinese Exclusion Act, it is important that racial hostility and xenophobia not again permeate our nation's immigration and social policies as it did for decades.

II. THE COMBINATION OF ANTI-SMUGGLING PENALTIES AND ASYLUM REFORMS IMPROPERLY COMBINES DIFFERENT GOALS UNDER OUR IMMIGRATION POLICIES.

NAPALC, like many other civil rights organizations, opposes the combining of two separate policy concerns into one major piece of legislation. The principal issues underlying the recent incidents of Chinese being smuggled into the United States on ships are organized crime, harsh conditions and severe labor exploitation of immigrants. Like other organizations we believe that those who are profitting from the smuggling and the hiring of these immigrants must be prosecuted to the fullest extent under existing law. The United States has at its disposal an array of laws and

prosecutorial power to properly punish those who have been abusing immigrants and flouting the labor laws.

However, by combining reforms in the asylum law with attempts to curb smuggling, Congress makes the improper assumption that somehow asylum seekers are criminals. Granting asylum to those fleeing persecution, as this Congress is well aware, is a time-honored tradition that our country codified under the Refugee Act of 1980. At that time, Congress recognized that war, political persecution, and other forms of persecution have prompted the migration of millions of people around the world. Joining with other members of the United Nations that have ratified the 1967 protocol,¹⁷ which itself incorporated the 1951 Convention,¹⁸ this nation committed itself to uphold the international human rights concept of asylum and to grant seekers the fair opportunity to apply and make their claims.

This delicate and life-saving procedure must be not be tainted by its combination with criminal provisions. Such a practice only serves to denigrate the asylum process and casts a giant shadow of criminality upon those who are fleeing conditions in countries long condemned for human rights abuses, such as China.¹⁹ We therefore

¹⁷ Protocol Relating to the Status of Refugees, January 1, 1967, 19 U.S.T. & O.I.A. 6223, T.I.A.S. 6577

¹⁸ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, appended to the Protocol at 19 U.S.T. & O.I.A. 6259-88

¹⁹ See, United States Department of State Country Reports on Human Rights and Practices for 1989 and similar reports for 1990, 1991; Amnesty International Report of 1991 on China; Senate Concurrent Resolution 19 - Relative to Human Rights Violations in

urge that the measure involving asylum be eliminated from legislation involving the anti-smuggling provisions, and that our recommendations outlined below (see asylum section) be adopted.

A second reason for not combining asylum reforms with anti-smuggling provisions is that the growing xenophobia that has coincided with the downturns in the national and global economies will be the unspoken premise behind undue restrictions on asylum. In past Congressional debates legislators opposed to current asylum procedures have asserted that the "compassion fatigue" of their constituents motivates their actions. That type of action is unwarranted, and should never serve as a guide for shaping or reshaping our humanitarian obligations.

III. INCREASED PENALTIES FOR SMUGGLING ARE UNNECESSARY. THE GOVERNMENT HAS SUFFICIENT LAWS AT ITS DISPOSAL BUT MUST COMMIT ITSELF TO THE FULL PROSECUTION OF SMUGGLERS WHO PROFIT.

Existing law provides that those who smuggle aliens into the United States are guilty of felonies and can be sentenced for a maximum of five years in prison per alien. 8 U.S.C. Sec. 1324(a). "Thus, even though several aliens are brought into the United States in a single transaction, a defendant may be charged and punished on a separate offense for each alien smuggled."²⁰ HR 2602 seeks to increase penalties from five years to ten years, while

the People's Republic of China. Congressional Record-Senate. S3107, March 12, 1991.

²⁰ National Lawyers Guild, Immigration Law and Crimes, Sec. 7.3(a) at p. 7-26 (1992).

proposals of the Administration²¹ and of Senator Dianne Feinstein (D-CA) seek "to increase [the penalties] to 10 years and to 20 years where victims sustain harm."²²

NAPALC maintains that the record simply does not show that there has been full prosecution and sentencing of smugglers. More importantly, it has never been shown that the current penalties are inadequate to address the problem. Rather than set policy based on a "knee jerk" reaction to the recent attempt of Chinese immigrants to enter, the Department of Justice must first establish that the law is inadequate, and, more importantly, that it has properly allocated sufficient resources to address the smuggling. Until then, NAPALC does not support any current proposals to increase the penalties for smuggling, and believes Congress should focus its efforts on the vigorous enforcement of existing laws by the Department of Justice and the Department of Labor.

IV. NAPALC OPPOSES THE EXPANSION OF INS ENFORCEMENT AUTHORITY, PARTICULARLY IN VIEW OF THE LACK OF ADEQUATE SAFEGUARDS AGAINST INS MISCONDUCT AND ABUSE.

Several proposals from Congress and the Administration have included the increasing of INS' enforcement authority to encompass, among other powers, the authority to use wiretaps. NAPALC opposes

²¹ See, "White House Preparing Tough Smuggling Plan", San Francisco Chronicle, July 21, 1993, p. 1.

²² Press Release of Senator Dianne Feinstein, "Senator Feinstein Outlines Plan to Enforce Borders: Suggests Border Crossing Toll to Finance Expansion", June 30, 1993

such increases in view of the long record of law enforcement abuses committed by the INS. For example, NAPALC members have served as co-counsel in major litigation successfully challenging INS abuses including beatings, unwarranted handcuffing, threats, and detention based on skin color.²³ This litigation resulted in the government paying nearly one-half million dollars in attorneys fees,²⁴ and, in other matters, paying substantial sums to the victims.²⁵

Another type of INS abuse of civil liberties was seen in its infiltration of the sanctuary movement²⁶, an operation which

²³ See, for example, International Molders & Allied Workers Local Union 164 v. Nelson, 643 F. Supp. 884 (N.D. Cal. 1986) (Asian Law Caucus as co-counsel)

²⁴ id.

²⁵ See, e.g. Aguayo v. Ilchert (N.D. Cal. 1992) (settlement)

²⁶ United States v. Maria del Socorro Pardo de Aguilar, No. CR-85-008-PHX-EHC (D. Ariz.). (prosecution of sanctuary activists under 8 U.S.C. Sec. 1324) One treatise explained the outrage over the government's tactics as follows:

Since the late 1970's, over one million Guatemalans and Salvadoran refugees have fled military and government-sponsored death squad violence in their countries and sought safe haven in the United States. In the face of this reality, a testament to the massive human rights violations committed by governments whose very existence depends on overt and covert U.S. aid and intervention, the Reagan Administration steadfastly maintained that these refugees are, in fact, indistinguishable from the "economic migrants" who arrive at U.S. borders....This view [was] manifest in the INS's denial of asylum to 97 percent of Salvadoran applicants...

In response to the Administration's posture toward Central American refugees, a grassroots, ecumenical movement, popularly known as the "sanctuary movement" was established. Throughout the United States, sanctuary workers, both clergy and laity, have provided food, shelter, transportation, access to medical care, employment and legal representation. As a result, members of the sanctuary movement have become vulnerable to charges of smuggling, transporting, and

included sending undercover agents into churches and religious meetings. In view of the lack of any review commission to examine INS abuses,²⁷ and because of the INS proven record of abuse of civil liberties, we oppose proposals to increase INS enforcement authority.

V. **NAPALC FIRMLY OPPOSES MEASURES TO SUMMARILY EXCLUDE IMMIGRANTS, SET NEW STANDARDS OF ASYLUM, AND DRASTICALLY REDUCE THE OPPORTUNITIES TO APPLY FOR POLITICAL ASYLUM.**

A. **Summary Exclusion Is Contrary to the Policies of the Refugee Act of 1980.**

Congress passed the Refugee Act of 1990 as a response to the

harboring aliens.

. . .

The indictments [of sanctuary workers in 1985] were obtained in large measure through use of paid INS informants who infiltrated sanctuary groups and tape recorded meetings and church services. . .

. . .

. . . Both the scope of the prosecutions and the government investigation tactics have attracted national attention and outraged church leaders and members from a broad spectrum. It is already clear, however, that notwithstanding its considerable efforts, the government failed to intimidate the sanctuary movement, much less eliminate it.

National Lawyers Guild, Immigration Law and Crimes, Sec. 7.3(a)(5), p. 7-39 to 7-41 (1992)

²⁷ H.R. 2119, the Immigration Enforcement Review Commission Act of 1993 was introduced as a response to the record of abuses over the last two decades, and is pending.

urgent needs of those subject to persecution in their homelands. Courts have specifically recognized that the right to apply for asylum is a constitutionally protected right, Haitian Refugee Center v. Smith, 676 F.2d 1023 (5th Cir. 1982), and "[t]he government violates the fundamental fairness which is the essence of due process when it creates a right to petition and then makes the exercise of that right utterly impossible." Id. at 1039.

Congress specifically amended Section 243(h) of the Immigration and Nationality Act to conform to Article 33 of the Refugee Convention, and provided uniform procedures for asylees in Section 208, no matter they had entered the United States. HR 2602 and the proposed legislation would effectively remove these amendments and reinstate the previous restriction that was explicitly removed in order to conform with international law, by providing a different procedure for people apprehended while attempting to enter without documents and for those who have made an "entry".

H.R. 2602, using summary exclusion procedures, seeks to remove incentives for aliens to enter the United States through abuse of the asylum process. NAPALC maintains that it is unfair and contrary to traditions of asylum to summarily exclude persons for the reasons discussed below.

H.R. 2602 allows for summary exclusion if potential asylum seekers do not either 1) present documentation or 2) indicate their intention to apply for provisional asylum or express a fear of persecution. This would mean that undocumented entrants would have

to ask for political asylum the moment they are apprehended and questioned by immigration officials.

B. Refugees Often Lack Documents

Many who flee persecution simply do not have proper travel documents because they are unobtainable from the persecuting country's authorities due to their political or religious activities or due to their inability to pay the bribes many corrupt government officials expect for travel documents. Cases handled by NAPALC member Asian Law Caucus reveal that asylum seekers and asylees had to bribe Chinese government officials in order to obtain passports and exit visas. Those who have no funds are forced to pursue surreptitious means to exit China and enter a new country.²⁸ Also, in some cases, attempts to obtain a passport or travel document could expose the applicant to arrest, detention, and persecution.

C. It Is Unfair and Unrealistic to Require Bona Fide Refugees to Make an Asylum Claim in the First Instance.

It is also unfair and contrary to humanitarian principles to expect that a potential asylee will automatically explain his intention to apply for provisional asylum or express a fear of persecution. The courts have recognized how difficult it is for

²⁸ Those seeking asylum rarely can pay the fee for a United States visa nor overcome the "public charge" exclusion grounds. 8 USC Sec. 212(a)(4). They come with "only the shirts on their backs" and may have traveled for weeks or months with nothing but a few cups of rice to sustain them.

bona fide refugees to make an asylum claim in the first instance. In Orantes-Hernandez v. Meese, 685 F. Supp. 1488 (C.D. Cal. 1988), the court found that refugees fleeing persecution by authorities "are unlikely to express that fear to uniformed Border Patrol agents," especially when the arrest by the INS is itself "frequently intimidating." *id.* at 1497. Furthermore, many asylum applicants and other clients that our offices have represented have expressed great fear of officers in uniform, in part, because of experiences in their home country - including torture, detention, and other abuses by law enforcement officers. Many who are eligible for asylum may not even know how to ask for asylum nor are they aware of the right. Orantes-Hernandez, *id.* An orderly operation of government and an expected trust of government officials is simply antithetical to their experiences and understandings of the relationship between government and the governed.

D. A Credible Fear of Persecution Cannot Be Determined at an Initial and Immediate Inspection.

HR 2602 provides that a person expressing a fear of returning to his home country is referred for "immediate inspection" to an asylum officer who must determine whether the applicant has a "credible fear" of persecution. If the applicant fails to meet the standard he will be summarily excluded without further hearing.

Under this proposal, an applicant's chance for asylum could depend solely upon his encounter with this one and only one

officer. The "factors in determining credibility include the applicant's demeanor, consistency of testimony, specificity and detail of testimony, willingness to testify under oath, and evidence of honesty and good character."²⁹ Thus, having traveled perhaps several weeks or months at sea or by foot, an asylum seeker must meet this extremely subjective standard in this brief encounter or else forfeit his chance. Given the high stakes for potential asylees sent back to their home countries after having their asylum request summarily denied as well as the chance of an incorrect INS determination at the summary interview, NAPALC strongly opposes this process.

E. Significant Appellate and Judicial Review Are Lacking

The unfairness of this situation described above is compounded by the fact that there is virtually no provision for administrative or judicial appeals. Under HR 2602, an alien seeking asylum could be denied the right to appear before an Immigration Judge where the alien has the right to present evidence, cross-examine witnesses, and examine and object to evidence offered against him. Such a situation stacks the odds tremendously against the weary refugee who may have traveled for months at sea or who had to undertake an otherwise perilous journey to seek safety. This procedure is a

²⁹ National Lawyers Guild, Immigration Law and Defense, Sec. 13.3, 13-21, fn.59 citing McGrath, "Credibility Determinations: Avoiding Adverse Findings in Asylum Hearings and Defeating Them on Appeal", 16 Immigration Newsletter No. 4 (July-Aug. 1967); and Watkins, "Credibility Findings in Deportation Proceedings" Bearing Witness Unto the Truth", Geo. Immigr. L.J. Vol. 2:231 (1987).

complete retreat from the protections as provided in the current law which provide that when an excludable alien applies for asylum, all of the procedural protections of 8 CFR Sec. 208 apply to his application.

While these procedural protections are statutory in nature, Constitutional "due process protection surrounds the determination of whether an alien has sufficiently shown that return to a particular country will jeopardize his life or freedom so as to invoke the mandatory prohibition against his return to that country . . . an alien's 'interest in not being returned [to a country where he fears persecution] may well enjoy some due process protection not available to an alien claiming only admission.'" Augustin v. Sava, 735 F.2d 32 (2d Cir. 1984) (citations omitted).

If due process does indeed apply to asylum applications, an adjudicating officer "must consider the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and the interest of the government in using the current procedures rather than additional or different procedures." Landon v. Plascencia, 459 U.S. 21 at 34 (1982). The courts have repeatedly warned against curbing the due process rights of asylum seekers, and recognized the importance of having a hearing before an immigration judge. As the court in Yiu Sing Chun v. Sava, 708 F.2d 869 (2d Cir. 1983) noted "because the severity of harm to the erroneously excluded asylee outweighs the administrative burden of providing an asylum hearing,

if the regulations did not do so already the INS arguably would be required to provide a hearing before an immigration judge to determine whether applicants for asylum are, in fact, refugees within the meaning of the [Refugee] Act." (emphasis added)

HR 2602 and similar legislative proposals simply do not recognize the harsh realities faced by refugees, especially those fleeing governments that have been condemned for human rights abuses by both the U.S. Department of State and other international human rights bodies.¹⁰ By erecting barriers in the form of statutory requirements that go beyond the intent of the Refugee Act of 1980, Congress inherently defeats the purpose of the 1980 act and will ultimately force the unwarranted return of those who flee persecution but who are afraid to step forward and identify themselves upon arrival in the U.S. or who simply cannot articulate their fear at the first instance for a variety of reasons not related to their credibility or actual fear. The stakes are too high for the asylum process to be treated in such cursory manner. For these reasons, NAPALC strongly opposes the summary exclusion provisions of HR 2602, the Administration's proposal, and similar measures.

VI. THE CURRENT PROPOSALS FOSTER AN ANTI-IMMIGRANT MOVEMENT THAT HAS RESULTED IN HATE VIOLENCE, IMMIGRANT BASHING, AND A CLIMATE OF DISTRUST AND FEAR.

Recent news articles reconfirm that the scapegoating of

¹⁰ See fn. 19.

immigrants for our society's problems has once again become in vogue.²¹ Our nation's leaders on the national, state, and local level have unabashedly and unequivocally blamed immigrants - documented and undocumented - for seemingly every social ill. Framing this discontent have been the Immigration Reform and Control Act of 1986 and its codification of the perception that immigrants are "taking away jobs" through the employer sanctions provision, and bills like H.R. 2602 and the "Expedited Exclusion and Asylum Reform Act of 1993". This Congressional imprimatur to the scapegoating of immigrants gives credibility and even the perception of approval to the anti-immigrant bashing. While this practice is in itself reprehensible, such bashing has unfortunately also resulted in violence - sometimes fatal - perpetrated upon Asians by those who perceive them as "the enemy".²² In fact, irresponsible comments by INS officials in an attempt to seek community cooperation against the smugglers, such as those by San Francisco District Director David Ilchert and New York District Director William Slattery, serve to indict the entire Chinese community as collaborators in the smuggling.

²¹ See, Benjamin, P. "Immigration is Part of America...But We Need to Exercise Controls", New York Daily News, June 26, 1993; "The Refugee Panic Act of 1993", The New York Times, July 23, 1993; "Immigrants Aren't Just Dead Weight", San Francisco Examiner, July 25, 1993.

²² For a summary of acts of anti-Asian violence coinciding with the introduction of the Simpson Mazzoli bill in 1982 and with the passage of and implementation of IRCA, see U.S. Commission on Civil Rights, Recent Activities Against Citizens and Residents of Asian Descent, Clearinghouse Publication 88, 1986; see also, Civil Rights Issues Facing Asian Americans in the '90's, supra.

For example, on several occasions in June 1993, Slattery publicly announced that the survivors of the Golden Venture are "illegal aliens" who would be detained indefinitely and made "an example". These statements have generated a climate in which Asian bashing is unleashed. On or about July 13, 1993, an anti-Chinese flier was sent to several Chinese families living in East Brunswick, New Jersey.³³ The flier described Chinese as "illegals", "slave traders", and members of organized crime and it threatened physical violence against any Chinese who did not leave New Jersey by August 5, 1993.³⁴ Such statements by INS officials

³³ "Chinese Family Gets Threatening Letter", The New York Times, July 15, 1993. According to East Brunswick Mayor Ira Oskowsky, the letter "is one of a series of threats against East Brunswick's minority groups" and "was not an isolated incident." id.

³⁴ The actual text of the flier is as follows:

PING PONG EXTERMINATORS

ENOUGH IS ENOUGH.

IT IS NOW TIME TO SEND THESE ILLEGALS AND SLAVE TRADERS TO WHERE THEY COME FROM.

WE WILL GET RID OF CHINESE FROM THE GARDEN STATE BEGINNING ONE MONTH FROM JULY 4TH.

THEY ARE CRIMINALS HIDING BEHIND THEIR BMW'S, BENZ AND USE THEIR LAUNDRY, RESTAURANT AND MASSAGE PARLORS TO CHEAT THIS COUNTRY.

THEY ARE INFILTRATING INTO SAFE COMMUNITIES OF THE GARDEN STATE AND BRINGING BIG CITY CRIMINAL GANGS WITH THEM. LOOK WHAT HAPPENED IN TEANECK.

WE WILL START WITH EDISON AND EAST BRUNSWICK, TWO OF THE SAFEST COMMUNITIES THESE CHINESE GANGS HAVE PICKED TO INFILTRATE.

IF YOU THINK THAT WHAT IS HAPPENING IN GERMANY IS

fuel the racism and xenophobia that mark these times.

Fortunately, others in the public have seen the shortsightedness of the current proposals and the xenophobia that shape them, and have called for their rejection.³⁵

A responsible leadership response to this situation is to ensure that racist, anti-immigrant sentiments, and general xenophobia are never again permitted to shape our nation's immigration statutes. Not only Asian Pacific Americans, but our nation's economy, ideals, and civil rights have suffered from years of exclusion due to legislative measures that have injected xenophobia and racist ideas into the law.

Leadership must be able to rise above the xenophobia, and put principles before politics. That leadership must also realize that

VIOLENT, YOU AIN'T SEEN NOTHING YET. THERE WILL BE
CHINESE BLOOD AND BONES ALL OVER IF THEY DON'T QUIT
VOLUNTARILY BY AUGUST 5TH.

GOD SAVE AND BLESS AMERICA.

GOD BLESS PPE, THE PING PONG EXTERMINATORS

³⁵ See, "The Refugee Panic Act of 1993", The New York Times, July 23, 1993 ("...there's no justification for compromising due process in the hearing of claims. As Congress deliberates the Administration's proposals, it needs to douse the panic, provide the resources, and focus on reform rather than exclusion") (emphasis added); "Immigrants Aren't Just Dead Weight", San Francisco Examiner, July 25, 1993 ("The unfortunate backlash against immigrants, exploited by too many politicians in the past year or so, tends to belittle newcomers to the country as a drag on the economy and an imposition on residents of long standing. This dismissal of the immensely varied ranks of new and future Americans is unjust to the great majority, and is simply mistaken....Rather than play on the myth of the dependent immigrant, politicians should concentrate on helping eager new Americans make their greatest potential contribution to the country's future").

Congress has fueled the anti-immigrant bashing and violence, and that these current proposals add fuel to the fire.

CONCLUSION

NAPALC strongly opposes HR 2602, the "Expedited Exclusion and Asylum Reform Act of 1993" and other similar proposals. It recommends that existing statutes regarding political asylum, exclusion, and smuggling remain the same. NAPALC also urges that any further debate on smuggling not include revisions to the asylum process. Enforcement and granting asylum are rooted in two completely different policy concerns.

The NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM was established in 1992 to coordinate national impact litigation and advocacy on matters affecting the civil rights of Asian Pacific Americans.

The ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, based in New York, was formed in 1974 to conduct impact litigation, advocacy and community education in the areas of immigration, labor/employment, civil rights, and voting rights.

The ASIAN LAW CAUCUS, based in San Francisco, California was formed in 1972 to provide legal services, community education, impact litigation, and advocacy to the third largest Asian American community in the United States (San Francisco Bay Area), with an emphasis in the areas of immigration, employment/labor, housing, voting rights and civil rights.

The ASIAN PACIFIC AMERICAN LEGAL CENTER OF SOUTHERN CALIFORNIA, based in Los Angeles, California, was formed in 1983 to provide direct legal services, community education, impact litigation, and advocacy to the largest Asian American community in the United States. It emphasizes the areas of immigration, employment discrimination, voting rights and civil rights.



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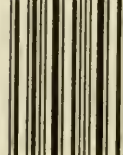


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